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Government of Bengal

Legislative Department

The Bengal Code

In Five Volumes

FOURTH EDITION

Volume III

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1939

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CONTENTS.

PREFACE.

Chronological Table of enactments printed in this volume	vii
Enactments in extenso : Bengal Acts of 1890 to 1919 ..	..	1

PAGE.

PREFACE

This, the third volume of the fifth edition of the Bengal Code, contains such of the Bengal Acts of the years 1890 to 1919 as are now in force in the Province of Bengal or in any part of that Province. The system followed in editing the volume is described in the preface to Volume I of this Code.

The Acts included in this volume are printed as modified up to the 31st December 1938; but the amendments and repeals effected by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939) have also been taken into account in preparing the text as well as the Chronological Table.

E. B. H. BAKER,

*Secretary to the Government of Bengal,
Legislative Department.*

CALCUTTA :

March 1939.

CHRONOLOGICAL TABLE OF ENACTMENTS
PRINTED IN THIS VOLUME.

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
1890	II	The Bengal Vaccination (Amendment) Act, 1890.	1	
1890	III	The Calcutta Port Act, 1890	11	
1892	I	The Bengal Village Chaukidari (Amendment) Act, 1892.		Amending Act. Not printed.
1893	I	The Licensed Warehouse and Fire-Brigade Act, 1893.	71	
1894	I	The Licensed Warehouse and Fire-Brigade Amendment Act, 1894.		Amending Act. Not printed.
1894	II	The Calcutta Port (Amendment) Act, 1894.		Ditto.
1894	III	The Calcutta Tramways Act, 1894	85	
1895	II	The Calcutta and Suburban Police (Amendment) Act, 1895.		Amending Act. Not printed.
1895	III	The Land Records Maintenance Act, 1895.	89	
1895	IV	The Calcutta Port (Amendment No. 1) Act, 1895.		Amending Act. Not printed.
1895	VI	The Calcutta Port (Amendment No. 2) Act, 1895.		Ditto.
1896	I	The Protection of Muhammadan Pilgrims Act, 1896.	101	
1897	V	The Estates Partition Act, 1897	111	
1898	I	The Calcutta Police Act, 1898	157	
1898	II	The Calcutta Port (Amendment) Act, 1898.		Amending Act. Not printed.
1898	III	The Bengal Tenancy (Amendment) Act, 1898.	161	
1899	I	The Bengal General Clauses Act, 1899.	165	
1899	II	The Bengal Civil Court Amins Act, 1899.	177	
1900	IV	The Calcutta Tramways (Electric Traction) Act, 1900.	179	
1903	I	The Bengal Tenancy (Validation and Amendment) Act, 1903.	189	

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
1904	I	The Bengal Tramways (Amendment) Act, 1904.		Amending Act. Not printed.
1904	II	The Bengal Public Parks Act, 1904	191	
1904	III	The Bengal Settled Estates Act, 1904.	197	
1905	I	The Sundarbans Act, 1905	217	
1905	III	The Bengal Smoke-nuisances Act, 1905.	219	
1905	IV	The Calcutta Port (Amendment) Act, 1905.		Amending Act. Not printed.
1905	VI	The Calcutta and Suburban Police (Superannuation Fund) Act, 1905.	229	
1906	I	The Bengal Court of Wards (Amendment) Act, 1906.		Amending Act. Not printed.
1907	I	The Bengal Tenancy (Amendment) Act, 1907.		Ditto.
1907	II	The Calcutta Port (Amendment) Act, 1907.		Ditto.
1907	III	The Calcutta and Suburban Police (Amendment) Act, 1907.		Ditto.
1908	I	The Calcutta Port (Amendment) Act, 1908.		Ditto.
1908	III	The Puri Lodging-house (Amendment) Act, 1908.		Ditto.
1908	V	The Bengal Local Self-Government (Amendment) Act, 1908.		Ditto.
1909	II	The Bengal Court of Wards (Amendment) Act, 1909.		Ditto.
1909	V	The Bengal Excise Act, 1909	235	
1910	I	The Calcutta Port (Amendment) Act, 1910.		Amending Act. Not printed.
1910	III	The Calcutta and Suburban Police (Amendment) Act, 1910.		Ditto.
1910	IV	The Bengal Cess (Amendment) Act, 1910.		Ditto.
1911	II	The Bengal Vaccination (Amendment) Act, 1911.	283	
1911	V	The Calcutta Improvement Act, 1911.	293	
1912	I	The Calcutta Port (Amendment) Act, 1912.		Amending Act. Not printed.
1912	II	The Bengal Mining Settlements Act, 1912.	375	

CHRONOLOGICAL TABLE OF ENACTMENTS.

ix

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
1913	I	The Calcutta Burial Boards (Amendment) Act, 1913.		Amending Act. Not printed.
1913	II	The Bengal Board of Revenue Act, 1913.	383	
1913	III	The Bengal Public Demands Recovery Act, 1913.	393	
1913	IV	The Bengal Public Gambling (Amendment) Act, 1913.		Amending Act. Not printed.
1914	I	The Bengal Laws Act, 1914	459	
1914	III	The Doveton Trust Act, 1914	465	
1914	V	The Chittagong Port Act, 1914	475	
1914	VI	The Bengal Medical Act, 1914	535	
1914	VII	The Bengal Excise (Amendment) Act, 1914.		Amending Act. Not printed.
1915	I	The Calcutta Port (Amendment) Act, 1915.		Ditto.
1915	III	The Calcutta Improvement (Amendment) Act, 1915.		Ditto.
1915	IV	The Bengal Embankment (Sundarbans) Act, 1915.	517	
1915	V	The Bengal Decentralization Act, 1915.	549	
1916	I	The Bengal Smoke-nuisances (Amendment) Act, 1916.		Amending Act. Not printed.
1918	I	The Bengal Public Demands Recovery (Amendment) Act, 1918.		Ditto.
1918	II	The Bengal Tenancy (Amendment) Act, 1918.		Ditto.
1918	III	The Bengal (Aliens) Disqualification Act, 1918.	551	
1918	IV	The Serampore College Act, 1918	553	
1918	V	The Chittagong Port (Amendment) Act, 1918.		Amending Act. Not printed.
1919	I	The Calcutta Hackney-carriage Act, 1919.	569	
1919	II	The Bengal Juvenile Smocking Act, 1919.	597	

CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
1919	III	The Bengal Tenancy (Amendment) Act, 1919.		Amending Act. Not printed.
1919	IV	The Bengal Primary Education Act, 1919.	601	
1919	V	The Bengal Village Self-Government Act, 1919.	617	
1919	VI	The Bengal Food Adulteration Act, 1919.	669	
1919	VII	The Calcutta and Suburban Police (Amendment) Act, 1919.		Amending Act,. Not printed.

The Bengal Code

Volume III

BENGAL ACTS OF 1890 TO 1919, IN FORCE IN THE
PROVINCE OF BENGAL.

Bengal Act II of 1890

[**The Bengal Vaccination (Amendment) Act, 1890.**]¹

(12th March 1890.)

An Act to amend the Bengal Vaccination Act, 1880.

Ben. Act
V of 1880.

Whereas it is expedient to amend the Bengal Vaccination Act, 1880 ; It is hereby enacted as follows:—

Preamble.

1. (*Commencement.*) *Rep. by the Amending Act, 1903 (I of 1903).*

2 to 4. [*Amendments incorporated in Ben. Act V of 1880.*]

5. (1) All rules made and orders issued under section 33 of the Bengal Vaccination Act, 1880, relating to the Town of Calcutta in force immediately before the passing of this Act, shall be deemed to be in force in Calcutta as defined by the Calcutta Municipal Consolidation Act, 1888.²

Rules and orders in force before passing of Act to be in force in Calcutta as defined by Ben. Act II, 1888.

Ben. Act
II of 1888.

(2) The ³[Provincial Government] may, from time to time, modify or cancel such rules and orders.

(3) And all such rules and orders relating to the Suburbs of Calcutta are hereby repealed.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see Calcutta Gazette*, 1890, Pt. IV, p. 2; and for Proceedings in Council, *see ibid*, Supplement, pp. 2, 44, 172 and 200.

The application of the Act is barred in the Chittagong Hill-tracts by Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²Ben. Act II of 1888 was repealed and re-enacted by Ben. Act III of 1899 which again has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923), and this reference should now be construed as a reference to the last mentioned Act—*See* the Bengal General Clauses Act, 1899 (Ben. Act I of 1899), s. 10.

³These words were substituted for the words “Local Government” by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act III of 1890

(The Calcutta Port Act, 1890.)

SUMMARY OF CONTENTS.

CHAPTER I.

	SECTIONS.
PRELIMINARY	1-3

CHAPTER II.

OF THE CONSTITUTION OF THE PORT COMMISSION	4-17
----------------------------------------------------	------

CHAPTER III.

OF THE BORROWING POWERS OF THE COMMISSION	18-27
---------------------------------------------------	-------

CHAPTER IV.

ON THE GENERAL POWERS OF THE COMMISSION.

Part I—Of the Duties of the Commission	28-39
Part II—Of the mode of transacting Business and entering into Contracts	40-54
Part III—Of the property of the Commissioners	55-58
Part IV—Of the Assessment of the property of the Commissioners	59-68
Part V—Of the Estimates of the Income, Expenditure and Audit	69-80
Part VI—Of Landing-places and Bathing ghats	81-82
Part VII—Of the erection of Wharves, Quays, Stages, Jetties, Piers or Moorings	83-89
Part VIII—Of the Landing and Shipments of Goods	90-102
Part IX—Of Levying Tolls and Rates	103-122C

CHAPTER V.

OF THE POWERS OF THE COMMISSIONERS AS CONSERVATORS OF THE PORT	123-124
------------------------------------------------------------------------	---------

CHAPTER VI.

OF WRECKS	125
-------------------	-----

CHAPTER VII.

OF BY-LAWS	126-128
--------------------	---------

CHAPTER VIII.

OF THE CONSTITUTION AND CONTROL OF PORT POLICE FORCE	129-132
--------------------------------------------------------------	---------

CHAPTER IX.

OF THE PORT POLICE BUDGET	133-134
-----------------------------------	---------

CHAPTER X.

MISCELLANEOUS	135-142
-----------------------	---------

SCHEDULES I AND II.

Arrangement of sections.**PREAMBLE.****CHAPTER I.****PRELIMINARY.****SECTION.**

1. Title and commencement.
2. Enactments repealed.
3. Definitions.

CHAPTER II.**OF THE CONSTITUTION OF THE PORT COMMISSION.**

4. Provisions of Act to be carried out by body of Commissioners.
5. Constitution of Commissioners.
6. Election of Commissioners.
7. In default of election, Central Government to appoint.
8. Appointment of Chairman and Deputy Chairman.
9. Term of office of Chairman and Deputy Chairman.
10. Term of office of Commissioners.
11. Salary and allowances of Chairman and Deputy Chairman, and fees payable to Commissioners for attendance at meetings.
12. Power to grant leave of absence to Chairman.
13. Central Government to fix leave allowance of Chairman.
- 13A. Pension for Chairman.
14. Vacancies in number of Commissioners to be filled within one month.
15. (1) Mode of filling temporary vacancies.
(2) Term of temporary appointments.
16. Mode of filling casual vacancies.
17. Disqualification of Commissioners.

CHAPTER III.**OF THE BORROWING POWERS OF THE COMMISSION.**

18. Power to raise money for works.
19. Power to borrow moneys by way of debenture.
20. Form and transferability of debentures.
Right to sue on debentures vested in holders.
- 20A. Signature of coupons attached to debentures.
21. Loans contracted by Commissioners to be first charge on property.
22. Power to raise money for payment of loans.
23. Loans to be contracted in India and in Indian currency.
24. (1) Establishment of sinking fund.
(2) Application of sinking fund.
(3) Investment of sinking fund.
- 24A. Annual examination of sinking fund.
- 24B. Establishment of reserve fund.
- 24C. Power to reserve debentures or securities for Commissioners.
25. Power to borrow moneys for construction of works.
26. Government how to proceed on default of payment of interest.
27. Power to repay loans before due date.

CHAPTER IV.

OF THE GENERAL POWERS OF THE COMMISSION.

PART I.—*Of the Duties of the Commission.*

SECTION.

28. (1) Acts or proceedings of Commissioners not to be invalidated in consequence of vacancy.
(2) Proceedings not to be invalidated by informality in election or appointment.
29. Commissioners may appoint Committees.
30. Commissioners to prepare, and in meeting sanction, schedule of establishment.
- 30A. Power to Commissioners to establish a provident fund and to grant long service bonuses.
31. (1) Power to frame rules.
(2) Central Government to determine right to pension, etc.
(3) Rules not to take effect until confirmed by Central Government.
32. Chairman or the Deputy Chairman to exercise certain powers with respect to officers and servants of Commissioners.
- 32A. Disposal of fines realised under section 32.
33. Commissioners in meeting to exercise certain powers with respect to officers and servants.
34. (1) Certain orders of Commissioners subject to previous sanction of Central Government.
(2) "Engineer" defined.
35. Works to be constructed and carried out by Commissioners.
36. (1) Government may order local survey and examination of works.
(2) Cost of survey and examination to be borne by Commissioners.
37. (1) Central Government to restore, complete or construct works on failure of Commissioners.
(2) Cost of restoration, etc., of works to be debt due to Government.
38. In default of execution of work, Central Government may withdraw and revoke powers of Commissioners.
39. Property vested in Commissioners to be transferred to, and vested in, His Majesty.

PART II.—*Of the mode of transacting Business and entering into Contract.*

40. Meetings of Commissioners.
41. Chairman may call special meetings of Commissioners or Committee.
42. Chairman and Deputy Chairman to attend and preside at meetings of Commissioners.
- 42A. Chairman to be whole-time officer.
43. President may adjourn meetings.
44. Minutes of proceedings to be kept open for inspection free of charge.
45. Votes to be taken by President.
46. Copy of minutes of meetings to be preserved in Bengal Office.
47. Chairman or Deputy Chairman may exercise certain powers of Commissioners.

SECTION

- 47A. Powers and duties of Deputy Chairman.
- 48. Power of Commissioners to enter into certain contracts.
- 49. Power of Commissioners in meeting to sanction works and make contracts for their execution.
- 50. Powers of Chairman or Deputy Chairman as to execution of works.
- 51. Certain new works subject to approval of Government.
- 52. Commissioners may compound or compromise for any claim or demand made against them.
- 53. Mode of executing contracts or agreements.
- 54. Officer or servant not to be concerned or interested in contracts or works of Commissioners.

PART III.—*Of the Property of the Commissioners.*

- 55. Powers of Commissioners as to property within or without limits of Port.
- 56. Powers of Commissioners in certain cases subject to assent of Central Government.
- 57. Property and moneys of Commissioners to be held upon trust for purposes of Act.
- 58. (1) Acquisition of land or building for purposes of Act.
(2) Land or building so acquired to vest in Commissioners.

PART IV.—*Of the assessment of the property of the Commissioners.*

- 59. Annual value of property vested in Commissioners how to be ascertained.
- 60. Sum paid as consolidated rate on annual value to be nine-tenths of amount payable by ordinary owner.
- 61. Amount to be paid by four quarterly instalments.
- 62. Annual value to be determined by Calcutta Corporation.
- 63. Annual value may be fixed by Central Government in certain cases.
- 64. First valuation when to be made, and when to take effect.
- 65. Calcutta Corporation to determine annual value of new buildings, etc., if acquired during currency of valuation.
- 66. Annual value may be renewed at expiration of first valuation.
- 66A. Mode of calculating annual value of building or structure.
- 66B. Building or structure to be valued.
- 66C. Sum to be paid as consolidated rate.
- 66D. Returns of the measurements to be furnished.
- 66E. Penalty for furnishing false return.
- 66F. Notice before valuing to be given to the Commissioners and owner.
- 66G. Objections how made by owner.
- 66H. Hearing of objection.
- 66I. Appeal from decision of Chairman.
- 66J. Valuation and adjudication to be final.
- 66K. Assessment, assessment-book, and special notice.
- 66L. Amendment of assessment-book.
- 66M. Payment of rate by the Commissioners to Corporation.
- 66N. Rates recoverable from owner of building or structure and tenants of land.
- 67. (1) Power of Calcutta Corporation to declare road or thoroughfare vested in Commissioners a public street.
(2) Corporation not to discontinue or stop up road or thoroughfare without Consent of Commissioners.
- 68. Calcutta Corporation may be required to light, cleanse and water roads.
- 68A. Effect when Calcutta Municipal Act, 1923, is extended outside Calcutta.

PART V.—Of the Estimates of Income, Expenditure and Audit.

SECTION.

69. (1) Estimate of income and expenditure to be laid before Commissioners at special meeting.
(2) Estimate when to be so laid.
70. Commissioners in meeting to consider and sanction estimate.
71. (1) Power of Central Government to disallow estimate and return it for amendment.
(2) Estimate to be re-submitted to Central Government after amendment.
72. (1) Commissioners may cause supplementary estimate to be prepared.
(2) Supplementary estimate to be submitted to Central Government.
- 72A. Excess expenditure by Commissioners.
73. Adherence to estimate.
74. Excess expenditure to be reported to Central Government.
75. Commissioners not to maintain officer or servant without authority.
76. (1) Audit and examination of accounts.
(2) Auditor's report to be delivered to Commissioners in meeting.
77. Central Government to appoint auditors.
78. (1) Auditors may require production of books, etc., for audit of accounts.
(2) Penalty.
79. Remuneration to auditors not being a public department.
80. Accounts to be kept in office of Commissioners and to be open for inspection.

PART VI.—Of Landing-places and Bathing-ghats.

81. Commissioners in meeting to provide public landing-places.
82. Powers with respect to bathing-ghats and landing-places.

PART VII.—Of the erection of Wharves, Quays, Stages, Jetties, Piers or Moorings.

83. Wharves, etc., not to be erected by private persons without assent of Central Government.
84. Penalty for unlawfully erecting wharves, etc.
85. Power to remove wharf, etc., if erected without limits of Port.
86. Commissioners to provide wharves, etc., for use of public.
87. Commissioners to provide wharves, etc., for use of Customs officers.
88. Tolls, etc., in respect of wharves, etc., set apart for Customs officers to be paid to Commissioners.
89. (1) Magistrate to summon masters of vessels with respect to damage caused to wharves, etc.
(2) Magistrate to issue warrant of distress if damage to wharves, etc., caused by negligence.

PART VIII.—Of the Landing and Shipment of Goods.

90. Commissioners to provide for landing, etc., goods, from sea-going vessels.
91. (1) Commissioners to grant receipts for goods landed by them.
(2) Liability for loss, etc., of goods to cease when once landed.
92. Commissioners to declare when docks, etc., are ready for landing goods from sea-going vessels.
93. Commissioners may order sea-going vessels to load or unload at docks, etc., when accommodation available.
94. Penalty for landing or shipping goods in contravention of order.
95. Power to direct goods not to be landed from sea-going vessels save at docks, etc., erected by Commissioners.

SECTION.

- 96. Penalty for landing or shipping goods after publication of order.
- 97. Commissioners to declare when docks, etc., are ready for landing goods from inland vessels.
- 98. Suit may be instituted for award of compensation.
- 99. (1) Goods not to be landed from inland vessels save at docks, etc.
(2) Penalty for breach of provisions.
- 100. Power to remove vessels lying within fifty yards of low-water mark.
- 101. Commissioners may require masters to remove vessels from docks, etc.
- 102. Power to charge vessels for use of docks, etc., after service of notice for their removal.

PART IX.—Of Levying Tolls and Rates.

- 103. Commissioners to frame scale of tolls, etc., for landing goods from sea-going vessels.
- 104. Commissioners to frame scale of tolls, etc., for landing goods into inland vessels.
- 104A. Commissioners to frame scales of tolls for use of docks, etc., by vessels.
- 105. Commissioners to frame scale of charges for services in respect of vessel or goods, etc.
- 105A. Charges for carrying passengers and their personal effects on Commissioners' vessels.
- 106. Commissioners to frame scale of tolls, rates, charges and fees in respect of vessels plying within limits of port, and in respect of persons thereon.
- 107. (1) Scale of tolls, etc., to be published after approval by Central Government.
(2) Power of Central Government to cancel scale of tolls, etc.
- 108. Power of Commissioners to charge additional, general or differential tolls, etc., on all or any portion or description of goods to provide for payment of debt.
- 109. Mode of levy and recovery of additional general or differential tolls, etc.
- 110. (*Repealed.*)
- 111. Recovery of tolls in arrear.
- 112. Responsibility of Commissioners for loss, destruction or deterioration of animals or goods.
- 113. (1) Commissioners to take charge of goods landed by them.
(2) Goods not stored in licensed warehouses to remain at risk and expense of owner if not removed within three days.
- 114. (1) Commissioners to give notice to consignee, etc., of cessation of liability,
(2) also to publish notice of expiry of such liability.
- 115. Liability of consignee or owner with respect to goods stored in public warehouses.
- 116. (1) Lien for freight preserved after landing of goods, if notice of lien be given.
(2) Goods to be retained in warehouses and sheds until discharge of lien.
- 117. Commissioners may permit goods to be removed without regard to lien.
- 118. Power of Commissioners to sell goods by public auction.
- 119. (1) Notice to be given before sale of goods.
(2) Notice to be given to owner by letter if address be known.
- 120. (1) Application of proceeds of sale.
(2) Surplus of sale-proceeds to whom to be paid.
- 121. Power of Collector of Customs to distrain vessels for non-payment of tolls.
- 122. Port clearance not to be granted until tolls, etc., are paid.
- 122A. Warehouses may be made bonded warehouses, and warrants may be granted.
- 122B. Commissioners may give security for duty on bonded goods.
- 122C. Commissioners may store goods in bonded warehouses.

SECTION.

CHAPTER V.

OF THE POWERS OF THE COMMISSIONERS AS CONSERVATORS OF THE PORT.

123. (1) Port dues received by Commissioners as Conservators of Port to form part of their income.
(2) Powers, etc., of Commissioners as Conservators.
124. Port dues, etc., received by Commissioners as Conservators to be included in debt to Government.

CHAPTER VI.

OF WRECKERS.

125. Commissioners to exercise functions of Receiver of Wreck.

CHAPTER VII.

OF BY-LAWS.

126. Power to make, alter or repeal by-laws.
127. Penalty for infringement of by-laws.
128. By-laws and tables of tolls, etc., to be printed and hung up at docks, etc.

CHAPTER VIII.

OF THE CONSTITUTION AND CONTROL OF PORT POLICE FORCE.

129. Constitution of Port Police Force.
130. Port Police Force to be under control of Commissioner of Police.
131. Superintendent of Port Police to act under control of Commissioner of Police.
132. Superintendent of Port Police to submit daily reports of offences.

CHAPTER IX.

OF THE PORT POLICE BUDGET.

133. Commissioner of Police to submit budget or estimate of Port Police Force to Commissioners.
134. (1) Budget when to be laid before Commissioners.
(2) Budget to be submitted to Central Government.
(3) Amount of estimates passed to be paid to officer appointed by Central Government.

CHAPTER X.

MISCELLANEOUS.

135. Indemnity to Commissioners against default of officers, etc.
136. Penalty for accepting illegal gratification.
137. Penalty for committing certain nuisances on docks, etc.
138. Jurisdiction in case of offences committed within Calcutta.
139. Jurisdiction in case of offences committed out of Calcutta.
140. Police officers to give immediate information of certain offences.
141. Police officer may arrest persons committing nuisances.
142. Time allowed for institution of suits.

First Schedule. Repeal of Acts of the Lieutenant-Governor of Bengal in Council.

Second Schedule (*Original*). (*Repealed*.)

Second Schedule (*New*). Form of Receipt for Goods.

Bengal Act III of 1890.

(The Calcutta Port Act, 1890.)¹

(28th May 1890.)

An Act to consolidate and amend the Law relating to the Port of Calcutta and to the appointment of Commissioners for the said Port.

Whereas it is expedient to consolidate and amend the law relating to the Port of Calcutta and to the appointment of Commissioners for the said Port : It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Calcutta Port Act, 1890. Title and commencement.

(2) It shall come into force on such date² as the ³[Central Government] may direct, not being more than three months after the date on which it may be published in the ⁴[*Official Gazette*] with the assent of the Governor General.

2. (1) On the commencement of this Act, the enactments specified in the First Schedule shall be repealed to the extent mentioned in the third column thereof. Enactments repealed.

(2) But this repeal shall not revive any office, authority or thing abolished by any such enactments, or affect the validity of anything done or suffered, or any right, title, obligation or liability accrued, before the commencement of this Act.

(3) All rules and by-laws prescribed, appointments made, powers conferred and notifications published

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1889, Part IV, p. 26, and for Proceedings in Council, see *ibid*, 1889, Supplement, pp. 661, 714, 960 ; *ibid*, 1890, Supplement, pp. 3, 45, 172, 200, 452, 504 and 668.

LOCAL EXTENT.—This Act extends only to the Port of Calcutta—see the title and preamble.

²The 1st June, 1890—see Notification No. 143, dated the 28th May, 1890, *Calcutta Gazette*, 1890, Part I, p. 509.

³These words were substituted for the words “ Local Government ” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words “ *Calcutta Gazette* ” by paragraph 4(1), *ibid*.

(Chapter I.—Preliminary.—Sec. 3.)

under any such enactments shall, so far as may be, be deemed to be respectively prescribed, made, conferred and published under this Act.

(4) Any enactment or document referring to any enactments hereby repealed shall be construed to refer to this Act, or the corresponding portion thereof.

(5) Nothing herein contained shall deprive any person of any right of property, or other private right, except as hereinafter expressly provided.

Definitions.

3. In this Act, unless there be something repugnant in the subject or context—

“The Commissioners,”

(1) “the Commissioners” shall mean “the Commissioners [of] the Port of Calcutta” hereinafter incorporated;

“Commissioner,”

(2) “Commissioner” shall mean a member of the said Corporation;

“Dock,”

(3) “dock” shall include all basins, cuts, quays, wharves, warehouses, tramways, and other works and things appertaining to any dock;

“Goods,”

(4) “goods” shall include wares and merchandise of every description;

“Land,”

(5) “land” shall include the bed of the river below high-water-marks;

“Master,”

(6) “Master,” when used in relation to any vessel, means any person, not being a pilot, harbour-master or assistant harbour-master, having for the time being the command or charge of such vessel;

“Pier,”

(7) “pier” shall include any stage, stairs, landing-place, jetty, floating-barge or pontoon, and any bridges or other works connected therewith;

“Port,”

(8) “port” shall mean the Port of Calcutta;

“Vessel,”

(9) “vessel” shall include any ship, barge, boat, raft or craft, or any other thing whatever, designed or used for the transport upon water of passengers or goods;

“Wharf,”

(10) “wharf” shall include any bank of the river which may be improved to facilitate the loading or unloading of goods, and any foreshore used for the same, and any wall enclosing or adjoining such bank or foreshore.

¹Sic. Read for—see s. 4.

of 1890.]

(Chapter II.—Of the Constitution of the Port Commission.—
Secs. 4-6.)

CHAPTER II.

OF THE CONSTITUTION OF THE PORT COMMISSION.

4. The duties of carrying out the provisions of this Act shall, subject to such conditions and limitation as are herein-after contained, be vested in a body of Commissioners to be called “the Commissioners for the Port of Calcutta”; and such body of Commissioners shall be a body corporate and have perpetual succession and a common seal, and shall sue and be sued by the name first aforesaid.

Provisions
of Act to be
carried out
by body of
Commis-
sioners.

15. There shall be nineteen Commissioners, that is to say—

Constitution of
Commissioners.

- (i) the Chairman, *ex-officio*,
- (ii) the Deputy Chairman, *ex-officio*,
- (iii) the Agent, East Indian Railway, *ex-officio*,
- (iv) the Agent, Bengal-Nagpur Railway, *ex-officio*.
- (v) the Agent, Eastern Bengal Railway, *ex-officio*,
- (vi) the Collector of Customs for the Port of Calcutta, *ex-officio*,
- (vii) the Port Officer, Calcutta, *ex-officio*, and
- (viii) twelve elected Commissioners.

6. ²(1) Of the elected Commissioners,—

Election of
Commissioners.

six shall be elected by the Bengal Chamber of Commerce, one by the Calcutta Trades Association,

one by the Corporation of Calcutta, and four by such body or bodies as the ³[Central Government] shall, from time to time, select as best representing the interests of the Indian mercantile community.

(2) The election shall be made in such manner as may be determined by the electing bodies, subject to the approval of the ³[Central Government]; and the name of every person so elected shall be published in the ⁴[Official Gazette].

¹Section 5 was substituted for the original section by s. 2 of the Calcutta Port (Amendment No. II) Act, 1926 (Ben. Act VI of 1926).

²Sub-section (1) was substituted for the original sub-section by s. 3, *ibid*.

³See foot-note 3 on p. 11, *ante*.

⁴See foot-note 4 on p. 11, *ante*.

[Ben. Act III]

(Chapter 11.—Of the Constitution of the Port Commission.—
Secs. 7-10.)

In default
of election,
Central
Government
to appoint.

7. In the event of default being made by the electing bodies aforesaid in electing any Commissioner under the last preceding section within the period hereinafter prescribed in this behalf, it shall be lawful for the ¹[Central Government] to appoint a person ²[by notification in the *Official Gazette*³] and the person so appointed shall ⁴[for all the purposes of this Act] be deemed to be a Commissioner as if he had been elected.

⁴8.

Appointment
of Chairman
and Deputy
Chairman.

5* * * *

⁶[(1)] The Chairman shall be appointed by the ¹[Central Government], after consultation with the Commissioners, by notification in the ²[*Official Gazette*]

⁶[(2)] The Deputy Chairman shall be appointed by the Commissioners at a special meeting to be held for the purpose ; and such appointment shall be subject to the approval of the ¹[Central Government.]

Term of office
of Chairman
and Deputy
Chairman.

79. (1) The Chairman shall continue to hold office until he resigns, or the ¹[Central Government] cancels his appointment, or appoints a successor.

(2) The Deputy Chairman shall continue to hold office until he resigns, or the Commissioners, with the approval of the ¹[Central Government], cancel his appointment, or appoint a successor.

Term of office
of Commis-
sioners.

10. ⁸[Every elected Commissioner] shall, subject to the provisions hereinafter contained, continue to hold the office to which he shall be elected ^{9*} *
for the term of two years ; but may, at the expiration of such term, be re-elected ^{9*} *

¹See foot-note 3 on p. 11, *ante*.

²These words were inserted by s. 4 of the Calcutta Port (Amendment No. 11) Act, 1926 (Ben. Act VI of 1926).

³See foot-note 4 on p. 11, *ante*.

⁴Section 8 was substituted for the original section 8 by s. 3 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

⁵Original sub-section (1) was repealed by s. 5(i) of the Calcutta Port (Amendment No. 11) Act, 1926 (Ben. Act VI of 1926).

⁶Sub-sections (2) and (3) were re-numbered as sub-sections (1) and (2) respectively by s. 5(ii), *ibid*.

⁷Section 9 was substituted for the original section by s. 4 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act, VII of 1920).

⁸These words were substituted for the words " Every person who shall be elected or appointed to be a Commissioner " by s. 6 of the Calcutta Port (Amendment No. 11) Act, 1926 (Ben. Act VI of 1926).

⁹The words " or appointed " and the words " or re-appointed " were omitted by s. 6, *ibid*.

of 1890.]

*(Chapter II.—Of the Constitution of the Port Commission.—
Secs. 11-13A.)*

11. (1) The Chairman shall receive such salary and allowances as may be fixed by the ²[Central Government].

Salary and allowances of Chairman and Deputy Chairman, and fees payable to Commissioners for attendance at meetings.

(2) The Deputy Chairman shall receive such salary and allowances as may from time to time be fixed by the Commissioners in meeting with approval of the ²[Central Government].

(3) The ²[Central Government] may determine whether any and what fees shall be paid to the Commissioners other than the Chairman and the Deputy Chairman for attendance at meetings for the transaction of the business of the Trust.

(4) The payment of any salary, allowances, or fees referred to in sub-section (1), (2) or (3) shall be subject to such conditions and restrictions as may be fixed by the ²[Central Government].

12. It shall be lawful for the ²[Central Government] to grant leave of absence to the ³[Chairman] and to appoint a person to officiate for such ³[Chairman] during his absence on leave.

Power to grant leave of absence to Chairman.

13. (1) The ²[Central Government] shall also fix the amount leave allowance to be granted to the ³[Chairman], and the salary to be paid to the person who shall be appointed to his office.

Central Government to fix leave allowance of Chairman.

(2) Any person appointed under ⁴[the last preceding] section to act for the ³[Chairman] shall, while so acting, have all the powers, and be liable to all the restrictions, and limitations, which the ³[Chairman] under this Act has and is liable to.

13A. It shall further be lawful for the ²[Central Government] to fix, on application made to it by the Commissioners in that behalf, the amount of pension, gratuity or compassionate allowance (if any) which shall be paid to the ³[Chairman] on his retirement from office and to determine the conditions under which the said pension, gratuity or compassionate allowance shall be so payable :

Pension for Chairman.

¹Section 11 was substituted for the original section by s. 5 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

²See foot-note 3 on p. 11, *ante*.

³This word was substituted for the word "Vice-Chairman" by s. 6 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

⁴These words were substituted for the word "this" by s. 2 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

⁵Section 13A was inserted by s. 2 of the Calcutta Port (Amendment) Act, 1915 (Ben. Act I of 1915).

(Chapter II.—Of the Constitution of the Port Commission.—
Secs. 14-17.)

Vacancies in
number of
Commis-
sioners to
be filled
within one
month.

14. All vacancies in the number of ²[elected Commis-
sioners], shall be filled by election ^{3*} *
within one month.

Mode of
filling
temporary
vacancies.

15. (1) A temporary vacancy caused by the absence
on leave of ⁴[any elected Commissioners], for a period not
less than three months nor more than one year shall be
filled up by election ^{5*} *
in the manner hereinbefore provided.

Term of
temporary
appointments.

(2) A person elected ^{6*} * *
under this section to fill a temporary vacancy shall hold
office until the expiry of the term of leave granted to the
Commissioner whose place he fills.

Mode of
filling
casual
vacancies.

16. In the case of death, resignation or disqualification
of ⁶[any elected Commissioner], a person shall forthwith
be elected ^{7*} *
in his stead in the manner hereinbefore provided.

Disqualifica-
tion of
Commis-

17. ⁸[Notwithstanding anything contained in section 5,]
every person ⁹[other than the Chairman or Deputy Chair-
man] who, at any time after ¹⁰[he becomes] a Commissioner,
shall be absent from six consecutive meetings without having

¹The proviso was omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "the Commissioner whether elected or appointed under this Act" by s. 7 of the Calcutta Port (Amendment No. II) Act, 1926 (Ben. Act VI of 1926).

³The words "or appointment as the case may be" were omitted by s. 7, *ibid.*

⁴These words were substituted for the words "any Commissioner" by s. 8, *ibid.*

⁵The words "or appointment" in sub-section (1) and the words "or appointed" in sub-section (2) were omitted by s. 8, *ibid.*

⁶These words were substituted for the words "any Commissioner" by s. 9, *ibid.*

⁷The words "or appointed" were omitted by s. 9, *ibid.*

⁸These words were inserted by s. 10(1) of the Calcutta Port (Amendment No. II) Act, 1926 (Ben. Act VI of 1926).

⁹These words were inserted by s. 7 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

¹⁰These words were substituted for the words "his election or appointment as" by s. 10(2) of the Calcutta Port (Amendment No. II) Act, 1926 (Ben. Act VI of 1926).

of 1890.]

*(Chapter II.—Of the Constitution of the Port Commission.—
Sec. 17.)*

the permission, in that behalf of the Commissioners, or who, having such permission, shall be absent from the meetings for a period exceeding one year.

(a) and every ¹[such] person who at any time after ²[he becomes] a Commissioner shall accept or agree to accept any office or place of profit, under this Act,

or

(b) who shall, save with the sanction of the ⁴[Central Government], participate or agree to participate in the profits of any work done by order of the Commissioners or be concerned or participate in the profits of any contract entered into with the Commissioners,

shall thenceforth cease to be a Commissioner, and his office shall thereon become vacant :

Provided that no Commissioner shall vacate his office by reason only of his being a shareholder in any Company, registered under the provisions of any Act for the registration of joint-stock companies passed by ⁵[any Legislature in India] or by the Parliament of the United Kingdom, or incorporated by Act of Parliament, Royal Charter or otherwise, with which the Commissioners may enter into any contract, or by reason of his being interested in any loan of money to the Commissioners :

Provided also that no Commissioner shall vacate his office by reason of his being interested in any purchase or lease of land or premises, the sale or lease of which the Commissioners may determine on at a meeting under the provisions of this Act ; or of his being interested in any agreement under which facilities may be granted for the landing and shipment of goods in return for stipulated income guaranteed to the Commissioners in consideration of their undertaking to construct or provide such facilities.

¹This word was inserted by s. 7 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

²See foot-note 10 on p. 16, *ante*.

³The words " except the office of Vice-Chairman " were repealed by s. 7, *ibid*.

⁴See foot-note 3 on p. 11, *ante*.

⁵These words were substituted for the words "any Indian Legislature " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter III.—Of the Borrowing Powers of the Commission.—Secs. 18, 19.)

CHAPTER III.

OF THE BORROWING POWERS OF THE COMMISSION.

Power to raise money for works.

18. If the ¹[Central Government] shall, ^{2*} * by an order published in the ³[*Official Gazette*], so direct, it shall be lawful for the Commissioners in meeting, from time to time, to raise money for the estimated cost of any of the following purposes sanctioned by the ⁴[Central Government], to such extent as it may, from time to time, direct :—

- (a) the construction and repair of works and erections necessary or expedient for carrying out the purposes of this Act ;
- (b) the acquisition of immovable and movable property requisite for such construction or repair as aforesaid ; and
- (c) the payment of such salaries, fees and expenses, and such principal and interest, as may be due by the Commissioners.

Power to borrow moneys by way of debenture.

19. When an order has been published under the last preceding section, it shall be lawful for the Commissioners in meeting to borrow ⁴[within such dates as may be approved by the ⁵Central Government] any sums of money the Commissioners may require for the objects mentioned in the last preceding section, by way of debenture on—

- (a) the security of the property now vested, or which may hereafter become vested in the Commissioners, and
- (b) the tolls, dues, rates, rents and charges leviable under this Act,

less the sum of five and-a-half lakhs set apart by the Commissioners as a reserve fund prior to the passing of this Act, and the further sums set apart by the Commissioners as a sinking fund for the purpose of paying off the loans contracted under the authority of this Act or any enactment hereby repealed.

¹See foot-note 3 on p. 11, *ante*.

²The words " with the previous sanction of the Governor General in Council " were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 4 on p. 11, *ante*.

⁴These words were inserted by s. 2 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

⁵The words " Central Government " were substituted for the words " Governor General in Council " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1890.]

(Chapter III—Of the Borrowing Powers of the Commission.—
Secs. 20-21.)

20. ¹[(1) All debentures which are issued under the authority of this Act shall be in such form as the Commissioners, with the previous consent of the ²[Central Government], shall from time to time determine : Form and transferability of debentures.

3*

*]

⁴(2) The holder of any debenture in any form duly authorized under this section may obtain in exchange therefor, upon such terms as the Commissioners shall from time to time determine, a debenture in any other form so authorized.

⁴(3) Every debenture issued by the Commissioners shall be transferable in such manner as shall be therein expressed.

⁵(4) The right to sue in respect of the moneys secured by any of such debentures, or the debenture issued under the authority of any enactment hereby repealed, shall be vested in the holders thereof for the time being, without any preference by reasons of some of such debentures being prior in date to others. Right to sue on debentures vested in holders.

⁶20A. All coupons attached to debentures issued under the authority of this Act shall bear the signature of the ⁷[Chairman] and such signature may be engraved, lithographed or impressed by any mechanical process. Signature of coupons attached to debentures.

21. All loans contracted by the Commissioners, whether by way of debentures or otherwise under this Act, shall be a first charge on the property now vested, or which hereafter may become vested, in the Commissioners and on the tolls, dues, rates, rents and charges leviable under this Act, as provided by section 19. Loans contracted by Commissioners to be first charge on property.

¹Sub-section (1) was substituted for sub-section (1) as amended by the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907), by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

²See foot-note 3 on p. 11, *ante*.

³The proviso was omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Sub-sections (2) and (3) were substituted for the original sub-section (1) by s. 3 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

⁵This sub-section was renumbered as sub-section “ (4) ” by s. 3, *ibid*.

⁶Section 20A was inserted by s. 2 of the Calcutta Port (Amendment) Act, 1908 (Ben. Act I of 1908).

⁷This word was substituted for the word “ Vice Chairman ” by s. 6 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

(Chapter III.—Of the Borrowing Powers of the Commission.—Secs. 22-24.)

Power to raise money for payment of loans.

22. The Commissioners in meeting may at any time, with the previous sanction of ¹[and within such dates as may be approved by] the ²[Central Government], raise, either by borrowing from the ³[Central Government], or by way of debenture, any money that may be required to pay any amount for the time being due under the authority of this Act or any enactment hereby repealed.

Loans to be contracted in India and in Indian currency.

23. Unless the ⁴[Central Government], ⁵* * * *, shall, by an order published in the ⁶[Official Gazette] otherwise direct all loans contracted by the Commissioner, under this Act shall be contracted in India and in the Indian currency.

Establishment of sinking fund.

24. ⁷(1) The Commissioners shall, in respect of each loan contracted by them by way of debenture under sections 19 and 22, pay into a sinking fund half-yearly out of their income before making any other disbursements such amounts as will suffice to liquidate the nominal amount of each such loan within such period as the ²[Central Government] may in each case direct, provided that such period may exceed the term of the debenture loan but shall in no case exceed sixty years.

Application of sinking fund.

(2) The Commissioners in meeting may, at any time, apply the whole or any part of a sinking fund, set apart under this section, in or towards the discharge of the moneys for the repayment of which the fund has been established :

Provided that they pay into the fund in each year, and accumulate, until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund, or the part of the sinking fund so applied.

¹These words in square brackets, in s. 22, were inserted by s. 4 of the Calcutta Port (Amendment) Act, 1907 (Pen. Act II of 1907).

²These words were substituted for the words " Governor-General in Council " by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words " Secretary of State for India in Council " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴See foot-note 3 on p. 11, *ante*.

⁵The words " with the previous sanction of the Governor-General in Council " were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶See foot-note 4 on p. 11, *ante*.

⁷Sub-section (1) was substituted for the original sub-section by s. 2. of the Calcutta Port (Amendment) Act, 1934 (Pen. Act IV of 1934).

of 1890.]

(Chapter III.—Of the Borrowing Powers of the Commission.

—Sec. 24A.)

(3) Such sinking fund shall be invested in the promissory notes and other securities of the ¹[Central Government] or in the debentures issued by the Commissioners under this Act, in the names of two trustees, one being the Commissioners, and the other a person to be appointed by the ²[Central Government].

Investment of sinking fund.

³24A. ⁴[(1)] The sinking fund established for the liquidation of any loan shall be subject to annual examination by the Accountant-General, Bengal, who shall ascertain whether the cash and the current value of the securities at the credit of the fund are actually equal to the amount which would have been accumulated, had investments been regularly made, and had the rate of interest as originally estimated been obtained thereon.

Annual examination of sinking fund.

The Commissioners shall pay forthwith into the sinking fund any amount which the Accountant-General may certify to be deficient, unless the ⁵[Central Government] specially sanctions a gradual readjustment.

⁶(2) If the cash and the current value of the securities at the credit of the sinking fund are in excess of the amount which should be at its credit the Accountant-General shall certify the amount of this excess, and the Commissioners in meeting may, with the previous sanction of the ⁵[Central Government],—

- (a) withdraw the whole or any part of the certified excess, in which case the trustees in whose names the sinking fund is invested under sub-section (3) of section 24 shall forthwith transfer securities of the requisite current value, or cash and securities of the requisite current value, to the Commissioners ; or
- (b) reduce or discontinue the half-yearly contributions to the sinking fund prescribed by sub-section (1) of section 24 ; or
- (c) adopt a combination of these measures.

⁶(3) The withdrawal of the whole or any part of an amount which on the annual examination of the sinking fund by the Accountant-General was ascertained to be in excess of the amount which should have been at the credit of that fund and

¹These words were substituted for the words "Government of India" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 3 on p. 11, ante.

³Section 24A was inserted by s. 6 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

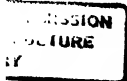
⁴Section 24A was re-numbered as sub-section (1) of section 24A by s. 3 of the Calcutta Port (Amendment) Act, 1934 (Ben. Act IV of 1934).

⁵See foot-note 2 on p. 20, ante.

⁶Sub-sections, (2) and (3) were added by s. 3 of the Calcutta Port Amendment) Act, 1934 (Ben. Act IV of 1934).

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[Ben. Act III]

(Chapter III.—Of the Borrowing Powers of the Commission.—
Secs. 24B, 24C.)

the transfer, for the purpose of such withdrawal, of cash and securities of the requisite current value to the Commissioners by the trustees in whose names the sinking fund was invested under sub-section (3) of section 24, made at any time before the commencement of the Calcutta Port (Amendment) Act, 1934, shall be and shall be deemed always to have been valid and lawful.

Ben. Act
IV of
1934.

Establishment
of reserve
fund.

24B. (1) The Commissioners in meeting may, from time to time, set aside such sums out of their revenue surplus, as they think fit, as a reserve fund or funds for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement, or for meeting expenditure arising from loss or damage from fire, shipwreck or other accident or for any other emergency arising in the ordinary conduct of their work under this Act :

Provided that the sums set aside as a reserve fund or funds shall not exceed such amount, annual or in the aggregate, as shall from time to time be prescribed by the ²[Central Government.]

(2) Such reserve fund or funds may be invested only in the promissory notes and other securities of the ³[Central Government] or in the debentures issued by the Commissioners under this Act.

Power to
reserve
debentures or
securities for
Commis-
sioners.

24C. (1) For the purposes of any investment which the Commissioners are authorised to make by this Act, it shall be lawful for the Commissioners in meeting to reserve and set apart any debentures or securities to be issued by them on account of any loan to which the approval of the ²[Central Government] has been given :

Provided that in the case of any issue offered to the public, the intention so to reserve and set apart such debentures or securities shall have been notified as a condition of the issue of the loan.

(2) The issue of any such debentures or securities direct to and in the name of the Commissioners themselves, shall not operate to extinguish or cancel such debentures or securities, but every debenture or security so issued shall be valid in all respects as if issued to, and in the name of, any other person.

(3) The purchase by the Commissioners or the transfer, assignment or endorsement to the trustees of the sinking fund or the Commissioners, of any debenture or security issued by the Commissioners, shall not operate to extinguish

¹Section* 24B and 24C were inserted by s. 2 of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

²See foot-note 3 on p. 11, *ante*.

³See foot-note 1 on p. 21, *ante*.

of 1890.]

(Chapter III.—Of the Borrowing Powers of the Commission.—Chapter IV.—Of the General Powers of the Commission.—Part I.—Of the Duties of the Commission.—Secs. 25-28.)

or cancel any such debenture or security, but the same shall be valid and negotiable in the same manner and to the same extent as if held by, or transferred, assigned or endorsed to any other person.

25. It shall be lawful for the Commissioners in meeting from time to time, to borrow moneys from the ¹[Central Government] at such rate of interest and upon such terms as to the time of repayment and otherwise as the ²[Central Government] may approve, for the construction, equipment, maintenance and management of any works or arrangements sanctioned by the ³[Central Government] under this Act.

Power to borrow moneys for construction of work.

26. In case of default of payment of any interest, the ¹[Central Government] shall have the same remedies as may be available to other debenture-holders of the Commissioners under this Act; but nothing in this Act shall be deemed to confer upon the ⁴[Central Government] any prior or greater right than that conferred upon other debenture-holders of the Commissioners under this Act.

Government how to proceed on default of payment of interest.

27. It shall be lawful for the Commissioners in meeting, if they think fit, out of any moneys which may come into their hands under the provisions of this Act, and which can be so applied without prejudicing the security of the other debenture-holders of the Commissioners under this Act, to repay to the ⁴[Central Government] any sum which, for the time being, may remain due to ⁵[it] under the provisions of this Act for principal, although, the time fixed for the repayment of the same shall not have arrived :

Power to repay loans before due date.

Provided that no such repayment shall be made of any sum less than ten thousand rupees; and that, if such repayment is made, the amount of interest in each succeeding half-yearly instalment shall be adjusted so as to represent exactly the interest due on the outstanding principal.

CHAPTER IV.

OF THE GENERAL POWERS OF THE COMMISSION.

PART I.—Of the Duties of the Commission.

28. (1) No Act or proceedings of the Commissioners shall be invalidated or illegal in consequence only of there

Acts or proceedings of Commissioners not to be invalidated in consequence of vacancy.

¹See foot-note 3 on p. 20, *ante*.

²See foot-note 2 on p. 20, *ante*.

³See foot-note 3 on p. 11, *ante*.

⁴These words were substituted for the words "said Secretary of State for India in Council" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵This word was substituted for the word "him" by paragraph 5(2), *ibid*.

(Chapter IV.—Of the General Powers of the Commission.—
Part I.—Of the duties of the Commission.—Secs. 29-30A.)

being a vacancy in the number of the Commissioners at the time of doing or executing such act or proceeding.

Proceedings
not to be
invalidated by
informality in
election or
appointment.

(2) All proceedings of the Commissioners, or of any person acting as a Commissioner in the *bona fide* belief that he was duly elected or appointed, shall, notwithstanding it be afterwards discovered that there was some defect in the election or appointment of the Commissioner or person acting as aforesaid, be as valid as if every such person had been duly elected or appointed to be a Commissioner.

Commissioners
may appoint
Committees.

29. The Commissioners may, from time to time, in accordance with a resolution passed at a meeting, appoint Committees of their number of carrying into effect any part of the provisions of this Act, with such powers, and under such instructions, directions or limitations as by such resolution shall be defined; and on any such Committee three members shall be a quorum; and the Commissioners in meeting shall have power to alter or discontinue any such Committee.

Commissioners
to prepare,
and in meeting
sanction
schedule of
establishment.

30. (1) The Commissioners shall, from time to time, prepare, and in meeting sanction, a schedule of the staff of officers and servants whom they shall deem it necessary and proper to maintain for the purposes of this Act.

(2) Such schedule shall also set forth the amount and nature of the salaries, fees and allowances which the Commissioners in meeting sanction for each such officer or servant;

Provided that artisans, porters and labourers, and sirdars of porters and labourers, shall not be deemed to be officers or servants within the meaning of the section or of ¹[section 31, ²except clauses (g) and (h) thereof], section 32 or section 33] of this Act.

Power to
Commissioners
to establish
a provident
fund and to
grant long
service
bonuses.

³30A. The Commissioners may, with the approval of the ⁴[Central Government]—

- (i) establish a provident fund for the benefit of their officers and servants appointed in accordance with the provisions of this Act, and compel all or any of such officers and servants to contribute to, and make supplementary contributions to, such provident fund and make payments thereout in accordance with the rules of such fund; and

¹The words and figures "section 31, section 32 or section 33," in s. 30 were substituted for the words "the three next succeeding sections" by the Amending Act, 1903 (I of 1903).

²These words were substituted for the words "except clause (g) thereof" by s. 3 of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

³Section 30A was inserted by s. 4, *ibid*.

⁴See foot-note 3 on p. 11, *ante*.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—
Part I.—Of the duties of the Commission.—Sec. 31.)

- (ii) make payments out of their general revenues of bonuses, based on the length of service of the officers and servants appointed in accordance with this Act, to such officers and servants or to the widows or dependent children of such of them as may die while still in the service of the Commissioners.

31. (1) The Commissioners in meeting shall, from time to time, frame rules— Power to
frame rules.

- (a) for regulating the grant of leave to the officers and servants of the Commissioners ;
- (b) for authorizing the payment of allowances to the said officers and servants, or to certain of them whilst absent on leave ;
- (c) for determining the remuneration to be paid to the persons appointed to act for any such officers or servants during their absence on leave ;
- (d) for regulating the period of service of all such officers and servants ;
- (e) for determining the conditions under which such officers and servants or any of them shall, on retirement, receive pensions, gratuities or compassionate allowances, and the amount of such pensions, gratuities or compassionate allowances ;
¹[and]
- (f) for authorizing the payment of contributions at certain prescribed rates, and, subject to certain prescribed conditions, to any provident fund which may, with their approval, be established by the officers and servants appointed under this Act, 2*
- ³(g) for prescribing the rates and the conditions under which the contributions may be paid by the Commissioners and their officers and servants to the provident fund which may be established under section 30A, and for determining the conditions of payments from the fund and the conditions of payments under clause (ii) of section 30A of bonuses based on length of service ; and

¹Sic. Omit "and."

²The word "and" was omitted by s. 5(1)(a) of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

³Clause (g) was inserted by s. 5(1)(b). *ibid.*

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—Part I.—Of the Duties of the Commission.—Sec. 32.)

¹[(h)] for determining the conditions under which pensions, gratuities or compassionate allowances may be paid to any of such officers or servants injured, or to surviving relatives of any such officers or servants killed, in the execution of their duty, whether the injury or death occurred before or after the commencement of the Calcutta Port (Amendment) Act, 1910 :

Ben. Act I
of 1910.

Provided that officers and servants who were appointed by Government previous to the passing of the Calcutta Port Improvement Act, 1870,² and whose salaries were paid from the fund known as "The Calcutta Port Fund," and who have continued in the service of the Commissioners appointed under the said Act and of the Commissioners constituted by this Act, shall be entitled to retiring pensions, gratuities or compassionate allowances at the same rates, and subject to the same conditions, as may, from time to time, be applicable to the ³[servants of the Crown] of similar standing and status.

Ben. Act V
of 1870.

Central
Government
to determine
right to
pension, etc.

⁴(2) In the event of any question arising as to the right of any officer or servant, or any surviving relative of any officer or servant, to any pension, gratuity or compassionate allowance referred to in clause (e) or ⁵[clause (h)], or as to the amount thereof, such question shall be determined by the ⁶[Central Government].

Rules not to
take effect
until
confirmed by
Central
Government.
Chairman or
the Deputy
Chairman
to exercise
certain powers
with respect
to officers and
servants of
Commissioners.

(3) Rules made under clauses (a) to (e) (both inclusive) ⁷[and under clauses (g) and (h)] shall not take effect unless and until they have been confirmed by the ⁶[Central Government].

32. Subject to the provisions of the said rules, and of the schedule, for the time being in force, framed by the Commissioners under section 30, the power of appointing, promoting, suspending, dismissing, fining, reducing or granting leave to the officers and servants

¹This clause was re-numbered as clause (h) by s. 5(1)(c) of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

²Bengal Act V of 1870 was repealed by s. 2(1) of the present Act.

³These words were substituted for the words "servants of Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴This sub-section was substituted for the original sub-section (2) by s. 3(2) of the Calcutta Port (Amendment) Act, 1910 (Ben. Act I of 1910).

⁵This word, letter and brackets were substituted for the word, letter and brackets "clause (g)" by s. 5(2) of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

⁶See foot-note 3 on p. 11, ante.

⁷These words and letters were substituted for the words and letter "or clause (g)" by s. 5(3) of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part I.—Of the Duties of the Commission.—Secs. 32A-34.)

of the Commissioners shall be exercised by the ¹[Chairman or the Deputy Chairman] in the case of officers and servants whose monthly salary does not exceed two hundred rupees; and in every other case by the Commissioners in meeting.

32A. Notwithstanding anything contained in section 57, all fines realised under the last preceding section shall be disposed of in such manner as the Commissioners may think fit. Disposal of fines realized under section 32.

33. The power of dispensing with the services of any officer or servant of the Commissioners otherwise than by reason of such officer's or servant's own misconduct, or of permitting any such officer or servant to retire on a pension, gratuity or compassionate allowance ³[or of granting a pension, gratuity or compassionate allowance to any officer or servant injured, or to surviving relatives of any officer or servant killed, in the execution of his duty,] shall, subject to the provisions of section 31, be exercised by the Commissioners in meeting. Commissioners in meeting to exercise certain powers with respect to officers and servants.

34. (1) Every order made by the Commissioners under ⁴[Section 31, section 32 or section 33,] shall, so far as the same relates to the ⁵[Deputy Chairman], Secretary, Engineer, Traffic Manager or Chief Accountant of the Commissioners, or to any other officer whose monthly salary ⁶[amounts to, or exceeds, one thousand rupees,] ⁷[or to any surviving relative of any officer referred to in this section,] be subject to the previous sanction of the ⁸[Central Government]. Certain orders of Commissioners subject to previous sanction of Central Government.

(2) In this section, the word "Engineer" means the Engineer of highest grade on the Commissioners' ordinary staff, and also any superior officer who may, from time to time, be employed in the capacity of Consulting Engineer to the Commissioners. * Engineer defined.

¹These words were substituted for the word "Vice-Chairman" by s. 8 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

²Section 32A was inserted by s. 3 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

³These words were inserted by s. 4 of the Calcutta Port (Amendment) Act, 1910 (Ben. Act I of 1910).

⁴These words and figures were substituted for the words "any of the three last preceding sections" by the Amending Act, 1903 (I of 1903).

⁵These words were inserted by s. 9 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

⁶These words were substituted for the words "shall exceed five hundred rupees" by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

⁷These words were inserted by s. 5 of the Calcutta Port (Amendment) Act, 1910 (Ben. Act I of 1910).

⁸See foot-note 3 on p. 11, ante.

(Chapter IV.—Of the General Powers of the Commission.—Part I.—Of the Duties of the Commission.—Sec. 35.)

Works to be constructed and carried out by Commissioners.

¹35. The works to be constructed and carried out by the Commissioners under the provisions of this Act may include—

- (1) docks, wharves, quays, stages, jetties, and piers, within the Port, with all necessary and convenient arches, drains, landing-places, ²[shelters for passengers], stairs, fences and approaches; and quarters and buildings necessary for the residence of the officers employed therefor;
- (2) railways;
- (3) warehouses and sheds, with all necessary appliances for receiving and storing goods landed or to be shipped or carried, and places suitable for the sampling and selling of such goods;
- (4) laying down moorings for carrying out the purposes of this Act; and the erection of cranes, scales, and all other necessary means and appliances for loading and unloading vessels;
- (5) reclaiming, enclosing and raising any part of the river bank or the river bed within the port, which may be necessary for the execution of the works authorized by this Act, or otherwise for the purposes of this Act;
- (6) the construction and application of dredgers and other machines for clearing, deepening and improving the river bed within the Port;
- (7) the building of steam-vessels required for the purpose of towing vessels in the Port;
- ³(7.) the building of vessels for the carrying of passengers and their personal effects within, or partly within and partly without, the limits of the Port;
- (8) the construction of such works without the limits of the Port as shall be necessary for the protection of works executed under this Act; and all such other works and appliances as may, in the opinion of the Commissioners in meeting, be necessary for carrying out the purposes of this Act.

¹Section 35 was substituted for the former s. 35 by s. 2 of the Calcutta Port (Amendment No. II) Act, 1895 (Ben. Act VI of 1895).

²These words were inserted by s. 2 of the Calcutta Port (Amendment) Act, 1926 (Ben. Act I of 1926).

³Clause (7a) was inserted by s. 4 of the Calcutta Port (Amendment) Act, 1905 (Ben. Act IV of 1905).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—

Part I.—Of the Duties of the Commission.—Secs. 36-38.)

36. (1) The ¹[Central Government] may, at any time, order a local survey and examination of any works of the Commissioners under this Act, or the intended site thereof.

Government may order local survey and examination of works.

(2) The cost of such survey and examination shall be borne and paid by the Commissioners out of the moneys in their hands by virtue of this Act.

Cost of survey and examination to be borne by Commissioners.

37. (1) If the Commissioners shall allow any work constructed by them under this Act to fall into disrepair, or shall not complete any work commenced by them or included in any estimate as aforesaid submitted and approved of, and shall not, after due notice in writing, proceed effectually to repair or complete such work under this Act, it shall be lawful for the ¹[Central Government] to cause such work to be restored, completed or constructed, either by the officers of the ¹[Central Government] or any private contractor.

Central Government to restore, complete or construct works on failure of Commissioners.

(2) The cost of any such restoration, completion or construction shall be a charge on the works and a debt due from the Commissioners to the ²[Central Government].

Cost of restoration, etc., of work to be debt due to Government.

38. (1) If at any time it shall appear to the satisfaction of the ¹[Central Government] that the works intended to be accomplished under this Act have not been and are not likely to be, properly carried out, or (if carried out) have not been, and are not likely to be, properly maintained by the Commissioners,

In default of execution of work, Central Government may withdraw and revoke powers of Commissioners.

it shall be lawful for the ¹[Central Government], by a notification to be published in the ³[*Official Gazette*], to declare that if, within a period of six months from the date of such notification, the Commissioners fail to take measures to the satisfaction of the ¹[Central Government] for the carrying out or proper maintenance of the said works, the powers by this Act conferred on the Commissioners will, at the end of such period, be withdrawn and revoked.

(2) And upon the expiration of the said period of six months it shall be lawful for the ¹[Central Government] by an order published in the ³[*Official Gazette*], to declare such powers revoked.

¹See foot-note 3 on p. 11, *ante*.

²These words were substituted for the words " Secretary of State for India in Council " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 4 on p. 11, *ante*.

(Chapter IV.—Of the General Powers of the Commission—Part I.—Of the Duties of the Commission.—Part II.—Of the mode of transacting Business and entering into Contracts.—Secs. 39-42.)

Property vested in Commissioners to be transferred to, and vested in, His Majesty.

39. By such last mentioned order, and without the necessity of any conveyance, all immovable and movable property, all rights of levying and recovering tolls, dues and rates, all benefit of contracts and all rights of suit, which at the time may be vested in the Commissioners under this Act, shall be transferred to and vested in ¹[His Majesty for the purposes of the Central Government]; and the rights of all creditors of the Commissioners under this Act shall continue as against the ²[Crown] to the extent of the property as transferred to and vested in ³[His Majesty].

46026

PART II.—Of the mode of transacting Business and entering into Contracts.

Meetings of Commissioners.

40. (1) The Commissioners shall meet, for the transaction of business, ordinarily once in every fortnight.

(2) Such meetings shall be held upon such day and at such hour as the Commissioners shall from time to time determine.

(3) At every meeting of the Commissioners five members shall constitute a quorum.

Chairman may call special meetings of Commissioners or Committee.

41. The Chairman, or, in his absence, the ⁴[Deputy Chairman] may, whenever he thinks fit, and shall, upon request made in writing by the Commissioners or two members of any Committee, call a special meeting of the said Commissioners or Committee, as the case may be.

Chairman and Deputy Chairman to attend and preside at all meetings of Commissioners.

42. (1) The Chairman ⁵[and the Deputy Chairman] shall attend all meetings of the Commissioners held under this Act, unless prevented by sickness or other reasonable cause; and the Chairman or in his absence, the ⁶[Deputy Chairman] shall preside at every such meeting.

(2) In the absence of both the Chairman and the ⁶[Deputy Chairman], the Commissioners present at any meeting may choose one of their number to preside.

¹These words were substituted for the words "Her Majesty" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This word was substituted for the words "Secretary of State for India in Council," *ibid.*

³These words were substituted for the words "Her Majesty", *ibid.*

⁴These words were substituted for the word "Vice-Chairman" by s. 2 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

⁵These words were substituted for the words "or Vice-Chairman" by s. 10, *ibid.*

⁶These words were substituted for the words "Vice-Chairman" by s. 10, *ibid.*

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.

—Part II.—Of the mode of transacting Business and entering into Contracts.—Secs. 42A-47.)

42A. While any person is holding the office of Chairman he shall not hold any other salaried office, and, subject to any exceptions permitted by the ²[Central Government], shall devote his whole time and attention to his duties under this Act.

Chairman to be whole-time officer.

43. The President of any meeting at which a quorum of the Commissioners shall be present may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

President may adjourn meetings.

44. (1) Minutes of the proceedings of all meetings of the Commissioners under this Act shall be drawn up and fairly entered in a book to be kept for that purpose, and shall be signed by the President after each meeting.

Minutes of proceedings to be kept open for inspection free of charge.

(2) The said minutes shall, at all reasonable times, be open at the office of the Commissioners to the inspection of any Commissioner without charge.

45. (1) Whenever necessary, the votes of the Commissioners present in meetings shall be taken by the President, and the resolution supported by the greater number of votes shall be deemed to be the resolution of the Commissioners at such meeting.

Votes to be taken by President.

(2) The President shall have a second or casting vote in all cases of equality of votes :

Provided that, when votes are taken, any Commissioner present may require that the votes given on each side shall be recorded.

46. A copy of the minutes of every meeting of the Commissioners shall, as soon as conveniently may be, be transmitted to such Secretary of the ²[Central Government] as shall, from time to time, be appointed for that purpose, and shall be preserved in the records of the office of such Secretary.

Copy of minutes of meetings to be preserved in Bengal Office.

47. All the powers, authorities and duties in and by this Act, conferred or imposed upon the Commissioners, may be exercised and performed by the Chairman or ³[Deputy Chairman], save the powers, authorities and duties by this Act, or by any rule, by-law or

Chairman or Deputy Chairman may exercise certain powers of Commis-

¹Section 42A was inserted by s. 11 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

²See foot-note 3 on p. 11, ante.

³These words were substituted for the word " Vice-Chairman " by s. 2 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

(Chapter IV.—Of the General Powers of the Commission—
Part II.—Of the mode of transacting Business and entering into Contracts.—Secs.—47A-50.)

order made under the provisions of this Act, conferred or imposed on, or restricted to, the Commissioners in meeting :

Provided that such powers, authorities and duties shall not be exercised by the Chairman or ¹[Deputy Chairman] in contravention of any order issued or rule passed by the Commissioners in meeting.

Powers and duties of Deputy Chairman.

247A. In addition to any powers or duties conferred or imposed on the Deputy Chairman by any other provision of this Act or by any rule, by-law or order made hereunder, the Deputy Chairman shall exercise such of the powers and perform such of the duties of the Chairman as the Commissioners in meeting may, subject to the approval of the ³[Central Government], from time to time, direct.

Power of Commissioners to enter into certain contracts.

48. The Commissioners, in accordance with a resolution passed at a meeting, may enter into contracts with any body corporate, registered joint-stock company or private person for the execution or supply by them or him of any works, labour materials, machines, stores or for other matters necessary for carrying into effect the trusts and purposes of this Act :

4*

Power of Commissioners in meeting to sanction works and make contracts for their execution. Powers of Chairman or Deputy Chairman as to execution of works.

549. The Commissioners in meeting may sanction works and enter into contracts for their execution :

Provided that no new work, the estimated cost of which exceeds two thousand rupees, shall be commenced until a plan and estimate have been approved by the Commissioners in meeting.

550. Notwithstanding anything contained in section 49 the ⁶[Chairman or the Deputy Chairman] may direct the execution of any work the cost of which does not exceed one thousand rupees, and may enter into contracts for the execution of such works.

¹These words were substituted for the word "Vice-Chirman" by s. 2 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

²Section 47A was inserted by s. 12, *ibid*.

³See foot-note 3 on p. 11, *ante*.

⁴The proviso to s. 48 was repealed by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

⁵These sections 49 and 50 were substituted for the original sections by s. 2 of the Calcutta Port (Amendment) Act, 1912 (Ben. Act I of 1912).

⁶These words were substituted for the word "Vice-Chairman" by s. 8 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part II.—Of the mode of transacting Business and entering into Contracts.—Part III.—Of the Property of the Commissioners.—Secs. 51-55.)

51. No new work, the estimated cost of which exceeds two lakhs of rupees, shall be commenced by the Commissioners until the plan and estimate thereof have been submitted to, and approved by, the ²[Central Government].

Certain new works subject to approval of Government.

52. The Commissioners may in meeting, compound or compromise for, or in respect of, any claim or demand made against them, for such sum of money or other compensation as they shall deem sufficient.

Commissioners may compound or compromise for any claim or demand made against them.

53. (1) Every contract and agreement by or on behalf of the Commissioners which shall exceed the sum of one thousand rupees shall be in writing and signed by the Chairman or ³[Deputy Chairman] and by two other Commissioners, and shall be sealed with the common seal of the Commissioners.

Mode of executing contracts or agreements.

(2) No contract nor agreement not executed as in this section is provided shall be binding on the Commissioners.

54. No officer or servant of the Commissioners shall be in anywise concerned or interested in any contract or work made with or executed for the Commissioners;

Officer or servant not to be concerned or interested in contracts or works of Commissioners.

and, if any such officer or servant be so concerned or interested, he shall be incapable of afterwards holding or continuing in any office or employment under the Commissioners, and shall forfeit and pay the sum of five hundred rupees, which may be recovered by suit by any person with full costs of suits :

Provided that nothing in this section shall apply to any person by reason only of his being a share-holder in any registered or incorporated company which may enter into any contracts with, or execute any works for the Commissioners ; or of his being interested as a debenture-holder in any loan contracted by the Commissioners.

Part III.—Of the Property of the Commissioners.

55. The Commissioners shall, for the purposes of this Act, have power to acquire and hold immovable

Powers of Commissioners as to property within or without limits of Port.

¹Section 51 was substituted for the original section by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

²See foot-note 3 on p. 11, ante.

³These words were substituted for the word "Vice-Chairman" by s. 2 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

(Chapter IV.—Of the General Powers of the Commission.—Part III.—Of the Property of the Commissioners.—Secs. 56-58.)

or movable property, whether within or without the limits of the Port, by conveyance, gift, lease, assignment, or sale ¹[from the Crown], or any corporate body, or any registered joint-stock company or private person; and they shall also have power in meeting to lease or sell any immovable or movable property which may have become vested in or been acquired by them :

Provided that no such sale, or other alienation or lease of any immovable property for any estate or interest exceeding the term of ten years, shall be valid unless the sanction of the ²[Central Government] to such sale, alienation or lease shall have been first obtained.

Powers of Commissioners in certain cases subject to assent of Central Government.

56. It shall not be lawful for the Commissioners to demise, farm, sell or alienate any power which, by or under this Act, may become vested in them of levying tolls, dues, rates, rents or charges, unless the assent of the ²[Central Government] to such demise, farm, sale or alienation shall have been first obtained.

Property and moneys of Commissioners to be held upon trust for purposes of Act.

57. All property vested in, or acquired or held by, and all moneys paid or payable to, the Commissioners, shall be held upon trust for the purposes of this Act and not otherwise.

Acquisition of land or building for purposes of Act.

58. (1) When any land or building is required for the purposes of this Act, the ²[Central Government] ^{3*} may declare that the land or building is required for a public purpose and ⁴[may cause] proceedings to be taken for obtaining possession of the same ⁵[for the Central Government] and for determining the compensation to be paid to the parties interested, according to any law in force for the acquisition of land for public purposes.

Land or building so acquired to vest in Commissioners.

(2) On payment by the Commissioners of the compensation payable under such law, and of the charges reasonably incurred by the Collector in respect of the proceedings thereunder, such land or building shall vest in them for the purposes of this Act.

¹These words were substituted for the words "from the Governor General in Council, or the Local Government, on behalf of the Secretary of State for India in Council" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 3 on p. 11, ante.

^{3*}The words "in its discretion" were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "may order," *ibid.*

⁵These words were substituted for the words "for Government," *ibid.*

of 1890.]

(Chapter IV.—Of the General Powers of the Commission
—Part IV.—Of the Assessment of the Property of the
Commissioners.—Secs. 59, 60.)

PART IV.—Of the Assessment of the Property of the
Commissioners.

59. For the purposes of Municipal assessment, the annual value of the property vested in the Commissioners within the municipal limits of Calcutta shall be ascertained in the following way :—

Annual value of property vested in Commissioners how to be ascertained.

Ben. Act II
of 1888.

(1) The aggregate expenditure incurred in the construction of all docks, wharves, quays, stages, jetties, piers, and other works belonging to the Commissioners ; also in the purchase of land ; also in the construction of offices, warehouse and other buildings belonging to them within the limits of Calcutta, as defined by the Calcutta Municipal Consolidation Act, 1888¹, shall determined.

(2) Expenditure incurred in procuring or putting up machinery shall not be included in such aggregate expenditure.

(3) Expenditure incurred from time to time on account of repairs necessary to maintain any works or buildings in good order shall not be included in such aggregate expenditure.

(4) Expenditure for the purpose of materially adding to, or improving, any work or building shall be included in such aggregate expenditure.

(5) Five *per cent.* on the aggregate expenditure determined in the manner hereinbefore provided shall be the annual value of the rateable property of the Commissioners, within the meaning of section 122² of the Calcutta Municipal Consolidation Act, 1888.

60. The sum to be paid to the Corporation of Calcutta as the consolidated rate payable on the annual value determined as in the last preceding section provided shall be nine-tenths of the amount which would be payable by an ordinary owner occupying his own buildings and lands.

Sum paid as consolidated rate on annual value to be nine-tenths of amount payable by ordinary owner.

¹Bengal Act, II of 1888 was repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act III of 1899), which again has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923) and this reference should now be construed as a reference to s. 3, clause (11) of the last mentioned Act.

²This reference should now be construed as a reference to s. 127 of Bengal Act III of 1923.

(Chapter IV.—Of the General Powers of the Commission,
—Part IV.—Of the Assessment of the Property of the
Commissioners.—Secs. 61-65.)

Amount to be
paid by four
quarterly
instalments.

61. Such amount shall be payable in four quarterly instalments due on the first day of April, the first day of July, the first day of October and the first day of January for the quarters beginning with those days; and, if not so paid, the Corporation of Calcutta shall have the same remedies for the recovery of each instalment as in the case of other rate-payers.

Annual value
to be determined
by Calcutta
Corporation.

62. The annual value shall, from time to time, be determined by the Corporation of Calcutta; and sections 130, 131, 133, 135 and 136 of the Calcutta Municipal Consolidation Act, 1888¹, shall apply to such valuation.

Ben. Act II
of 1888.

Annual value
may be fixed
by Central
Government
in certain
cases.

63. In the event of the Commissioners being dissatisfied with the order passed on objection by the Chairman or Vice-Chairman of the Corporation of Calcutta, they may, within one month, make a reference to the ²[Central Government]; and the ²[Central Government] shall thereupon fix the annual value, in accordance with the provisions of section 59; and the decision of the ²[Central Government] shall be final and valid for a period of six years.

First
valuation
when to be
made, and
when to take
effect.

64. The first valuation under the provisions of this Act shall be made when the new dock is opened to traffic; and if the annual value is fixed by the ²[Central Government], in accordance with the provisions of the last preceding section, such valuation shall take effect from the date when the special notice is given under section 133³ of the Calcutta Municipal Consolidation Act, 1888.

Calcutta
Corporation
to determine
annual value
of new buildings,
etc., if acquired
during
currency of
valuation.

65. (1) If, during the currency of a valuation made under the provisions of this Act, any new building, dock, jetty or other work is constructed, or any new land is acquired by the Commissioners, or any material improvement is made in any building, dock, jetty or other work within Calcutta, the Corporation of Calcutta may determine the annual value of such new building, work or land, or of such improvement, and may add it to the annual value previously ascertained.

(2) The provisions of sections 59 to 63 (both inclusive) shall apply to such valuation.

¹See foot-note 1 on p. 35, *ante*. This reference should now be construed as a reference to ss. 136 (and 507), 488 (s. 136 in Table), 138, 139 and 140 of Bengal Act III of 1923.

²See foot-note 3 on p. 11, *ante*.

³This reference should now be construed as a reference to s. 138 of Bengal Act III of 1923.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.
—Part IV.—Of the Assessment of the Property of the
Commissioners.—Secs. 66-66D.)

66. At the expiration of the first valuation made under this Act, such valuation, including any alterations made under the last preceding section, may, if so agreed upon by the Commissioners and the Corporation of Calcutta, be renewed for a further period of six years ; and may similarly be renewed, from time to time, for periods of six years.

Annual value may be renewed at expiration of first valuation.

166A. (1) For the purpose of municipal assessment, in cases where any land vested in the Commissioners is let out to tenants and any building or structure is erected thereon by such tenants, the annual value of such building or structure, when erected, shall be five *per cent.* on the estimated present cost of erecting such building or structure, less a reasonable amount to be deducted on account of depreciation, if any.

Mode of calculating annual value of building or structure.

(2) The buildings and structures in each holding, as recorded in the rent register of the Commissioners, shall be separately valued and assessed.

166B. Such building or structure may be valued annually at the discretion of the Corporation of Calcutta, and shall be so valued on the application of the owner. When not so valued, the former valuation shall remain in force from year to year until a revaluation is made.

Building or structure to be valued.

166C. The sum to be paid to the Corporation of Calcutta as the consolidated rate payable on the annual value of such building or structure as determined in accordance with the provisions of the last preceding section shall be the total amount of the rates fixed under section 71² of the Calcutta Municipal Consolidation Act, 1888.

Sum to be paid as consolidated rate.

Ben. Act
II of 1888.

166D. The Corporation of Calcutta, by a notice in writing, may require the owner of any such building or structure to furnish them with returns or the measurements thereof ; and the Corporation of Calcutta or any person authorized by them in that behalf may, at any time between the hour of seven in the forenoon and sunset, enter on and inspect, survey and measure such building or structure, after giving to such owner a notice in writing of their intention, not less than twenty-four hours previous to such entry and inspection.

Returns of the measurements to be furnished.

¹Sections 66A to 66N were inserted by s. 3 of the Calcutta Port (Amendment No. II) Act, 1895 (Ben. Act VI of 1895).

²See foot-note 1 on p. 35, *ante*. This reference should now be construed as a reference to s. 94 of Bengal Act III of 1923.

(Chapter IV.—Of the General Powers of the Commission.—

Part IV.—Of the Assessment of the property of the Commissioners.—Secs. 66E-66-I.)

Penalty for
furnishing
false return.

66E. Whoever refuses or fails to furnish any such return for the space of one week from the day on which he shall have been required so to do, or knowingly makes a false or incorrect return,

and whoever hinders, obstructs or prevents the Corporation of Calcutta, or any person appointed by the Corporation of Calcutta as aforesaid, from entering, inspecting, surveying or measuring any such building or structure,

shall be liable to a fine not exceeding Rs. 200 for every such offence.

Notice before
valuing to be
given to the
Commis-
sioners and
owner.

66F. (1) Before valuing any such building or structure in accordance with the provisions of section 66B, the Corporation of Calcutta shall give notice to the Commissioners and the owner that, on or after a date not less than fifteen days from the receipt of such notice by the Commissioners and the owner, such valuation will be made.

(2) If the valuation so made exceeds the previous valuation, the Corporation of Calcutta shall include in the special notice provided for in section 66K(3) full details of the amount of such valuation.

Objections
how made by
owner.

66G. If the owner of any building or structure is dissatisfied with a valuation made under the provisions of section 66A to section 66F (both inclusive), he shall, within fifteen days after the receipt of the special notice referred to in sections 66F and 66K, deliver at the office of the Corporation of Calcutta a notice in writing stating the grounds of his objection.

Hearing of
objection.

66H. (1) All such objections shall be entered in a register to be maintained for the purpose; and, on receipt of any objection, notice shall be given to the objector of a day and place when his objection will be investigated.

(2) On the day and place notified, the Chairman or Vice-Chairman of the Corporation shall hear the objection, and such hearing shall be in the presence of the objector, if he shall appear; the Chairman or Vice-Chairman of the Corporation may also for reasonable cause at any time adjourn the investigation.

(3) The order passed on such objection shall be recorded in the register of objections, together with the date of such order.

Appeal from
decision of
Chairman.

66I. (1) The owner of such building or structure if dissatisfied with the order passed on his objection, may appeal to the Court of Small Causes having jurisdiction in

¹See foot-note 1 on p. 37, ante.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.

—Part IV.—Of the Assessment of the Property of the Commissioners.—Secs. 66-J-66L.)

the place where such building or structure is situated. Such appeal shall be presented to the Court of Small Causes within thirty days from the date of the order passed under section 66H, and shall be accompanied with an extract from the register of objections containing the order objected to.

(2) No appeal shall be admitted unless an objection has first been taken in accordance with the provisions of section 66G.

166J. The valuation by the Corporation of Calcutta, when no appeal therefrom is made, as hereinbefore provided, and the adjudication of any appeal under the last preceding section, when such appeal is made, shall be final and binding.

Valuation and adjudication to be final.

166K. (1) The valuation so made by the Corporation of Calcutta, subject to such alterations as may, from time to time thereafter, be duly made, shall be entered in a book, to be called the assessment-book, and to be kept at the office of the Corporation, and in the same form, as far as may be, as the rent register of the Commissioners.

Assessment, assessment-book, and special notice.

(2) A copy of such book and of all entries therein, as modified from time to time, shall be supplied to the Commissioners, and shall be open to inspection between the hours of 11 a.m. and 5 p.m. at the head office of the Commissioners.

(3) A special notice, including an extract from the assessment-book showing the valuation of each building or structures, and stating the time within which an objection shall be lodged, shall, on the completion of the valuation under sections 66A to 66F (both inclusive), be given by the Corporation to the owner of such building or structure.

(4) The assessment calculated on the said valuation shall, subject to such alterations as aforesaid, be deemed to be the amount payable during the whole period for which the valuation is in force; and this period shall be calculated from the commencement of the quarter next succeeding that in which any alterations as aforesaid shall have been made; and until such date, the old valuation shall continue in force, notwithstanding that the period for which it was made may have expired.

166L. (1) The Corporation of Calcutta may, after giving notice to the Commissioners and the owner of such building or structure in the manner provided in section 66D, at any time amend the assessment-book, by inserting therein—

Amendment of assessment-book.

(a) the name of any person whose name ought to be so inserted; or

¹See foot-note 1 on p. 37, ante.

[Ben. Act III]

(Chapter IV.—Of the General Powers of the Commission.—

Part IV.—Of the Assessment of the Property of the Commissioners.—Secs. 66M, 66N.)

(b) the description of any building or structure hereinbefore mentioned liable to any such rate; or

(c) the valuation, when such building or structure has not already been valued.

(2) The Corporation of Calcutta may, without notice, strike out the name of any person or the description of any building or structure not liable to the rate, or may reduce the amount of valuation.

(3) All such changes shall be notified to the Commissioners and to the owner of the building or structure in the manner provided in section 66K; and the provisions of sections 66G, 66H, 66I, and 66J shall, so far as may be practicable, apply.

Payment of rate by the Commissioners to Corporation.

166M. (1) The Commissioners shall, during the first month of each succeeding quarter, pay to the Corporation of Calcutta the consolidated rate so assessed for the previous quarter for such portion of the previous quarter as the Commissioners' land was occupied by each tenant and the liability for rent incurred:

Provided that, unless notice of the termination of tenancy during a quarter, has been given by the Commissioners to the Corporation of Calcutta within one month of such termination, the Commissioners shall be liable for the whole consolidated rate assessed in respect of such quarter.

(2) Before paying the consolidated rate assessed to the Corporation of Calcutta, the Commissioners shall deduct and retain a sum equal to one-eighth of such rate.

(3) For the recovery of any such sum, the Corporation of Calcutta shall have all such and the same remedies, powers, rights and authorities as they possess under the Calcutta Municipal Consolidation Act, 1888.²

Ben. Act II
of 1888.

Rates recoverable from owner of building or structure and tenants of land.

166N. (1) The Commissioners may recover from the owner of any such building or structure the whole of the rate so assessed, as hereinbefore stated, by the Corporation of Calcutta, in respect of any such building or structure.

(2) They may further recover from the tenants of the land assessed under sections 59 to 65 (both inclusive) and amount not exceeding one-half of the whole of the consolidated rate so assessed by the Corporation of Calcutta, in respect of such portions of the land as shall have been leased to such tenants. ⁴

¹See foot-note 1 on p. 37, *ante*.

²See foot-note 1 on p. 35, *ante*. This reference should now be construed as a reference to Bengal Act III of 1923.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—Part IV.—Of the Assessment of the Property of the Commissioners.—67-68A.)

(3) All sums so due shall be recovered and collected by the Commissioners, together with the rent payable to them by such tenants or owners in respect of such land or any such building or structure.

(4) For the purpose of recovering such sums, the Commissioners shall have the same remedies, powers, rights and authorities as if such rates were rent recoverable by them.

67. (1) The Corporation of Calcutta, on being satisfied that any road or thoroughfare vested in the Commissioners is not less than forty feet in width, and has been duly levelled, paved, metalled, flagged, channelled and sewered, shall, at the request of the Commissioners declare such road or thoroughfare to be a "public street" as defined by the Calcutta Municipal Consolidation Act, 1888¹; and thereupon the same shall become a public street and be from time to time lighted, cleansed, watered and repaired by the Corporation of Calcutta.

Power of Calcutta Corporation to declare road or thoroughfare vested in Commissioners a public street.

(2) It shall not be competent to the Corporation of Calcutta to discontinue or stop up any such road or thoroughfare, without the previous consent of the Commissioners; and the land occupied by any road or thoroughfare so discontinued or stopped shall vest in the Commissioners, and not in the Corporation of Calcutta.

Corporation not to discontinue or stop up road or thoroughfare without consent of Commissioners.

68. The Commissioners may, without parting with the control of any road or thoroughfare which is open to the public or of the road of any dock, wharf or jetty, call upon the Corporation of Calcutta, to light, cleanse, and, if necessary, water such road; and thenceforward the Corporation of Calcutta shall light, cleanse, and, if necessary, water such road:

Calcutta Corporation may be required to light cleanse and water roads.

Provided that such road shall remain vested in the Commissioners, and shall not be stopped or discontinued, or temporarily closed, except by the Commissioners or with their consent.

68A. (1) The provisions of this Part, except sections 67 and 68, shall, notwithstanding anything contained in any other law, be applicable for the assessment of the properties of the Commissioners within the municipality of Howrah or within any other municipality in the neighbourhood of Calcutta or within any part thereof to which section 127 of the Calcutta Municipal Act, 1923, has been or may be extended under section 540 of the said Act.

Effect when Calcutta Municipal Act, 1923, is extended outside Calcutta.

¹See foot-note 1 on p. 35, *ante*. This reference should now be construed as a reference to s. 3, cl. (57) of Bengal Act III of 1923.

²Section 68A was inserted by s. 2 of the Calcutta Port (Amendment) Act, 1933 (Ben. Act III of 1933).

Ben. Act
II of 1888.

Ben. Act
III of 1923.

(Chapter IV.—Of the General Powers of the Commission.—
Part V.—Of the Estimates of Income, Expenditure
and Audit.—Sec. 69.)

(2) In each municipality or part thereof referred to in sub-section (1)—

(a) for the word 'Calcutta' after the words 'the municipal limits of' and for the words and figures 'Calcutta as defined by the Calcutta Municipal Consolidation Act, 1888' in section 59 and for the word 'Calcutta' after the word 'within' in section 65 the name of such municipality shall be read ;

Ben. Act
II of 1888.

(b) for the words 'the Corporation of Calcutta' in sections 60, 61, 62, 65, 66, 66B, 66C, 66D, 66E, 66F, 66G, 66J, 66K, 66L, 66M and 66N and for the words 'the Corporation' in section 66K, the words 'the Commissioners of the local municipality' shall be read ;

(c) for the words 'the Chairman or Vice-Chairman of the Corporation of Calcutta' in section 63 and the words 'the Chairman or Vice-Chairman of the Corporation' in section 66H the words 'the authority appointed in this behalf by the Commissioners of the local municipality' shall be read ; and

(d) for the words 'the Court of Small Causes' in section 66-1 the words 'the Court of the Subordinate Judge' shall be read.

PART V.—Of the Estimates of Income, Expenditure and
Audit.

Estimate of
income and
expenditure to
be laid before
Commissioners
at special
meeting.

59. (1) The ¹[Chairman] shall, at a special meeting to be held in the month of February in each year, lay before the Commissioners an estimate of the income and of the expenditure of the Commissioners for the year commencing on the first day of April then next ensuing, in such detail and form as the ²[Central Government] shall, from time to time, direct.

Estimate
when to be
so laid.

(2) Such estimate shall be completed and printed, and a copy thereof sent by post or otherwise to each Commissioner at least ten clear days prior to the meeting before which the estimate is to be laid.

¹This word was substituted for the word "Vice-Chairman" by s. 6 of the Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

²See foot-note 3 on p. 11, ante.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—

Part V.—Of the Estimates of Income, Expenditure and Audit.—Secs. 70-72A.)

70. The Commissioners in meeting shall consider the estimate as submitted to them, and shall sanction the same either unaltered or subject to such alterations as they shall think fit.

71. ¹(1) The estimate as sanctioned by the Commissioners shall, not later than the first day of March next following, be submitted to the ²[Central Government], who may, at any time prior to the first day of April next following, either disallow or modify such estimate, or any portion thereof, and return the same for amendment.

(2) The Commissioners shall, if the estimate is so returned, forthwith proceed to amend the same; and shall re-submit the estimate so amended to the ²[Central Government].

72. (1) The Commissioners may, at any time during the year for which any such estimate has been sanctioned, cause a supplementary estimate to be prepared and submitted to them.

(2) Every such supplementary estimate shall be considered and sanctioned by the Commissioners in meeting and submitted to the ²[Central Government] in the same manner as if it were an original annual estimate.

³72A. The Commissioners in meeting shall be at liberty, in any year, to expend, in addition to the sums sanctioned by the estimate for that year as approved by the ²[Central Government],—

(a) any sum or sums chargeable to revenue, the expenditure of which shall in their opinion be necessary and which could not reasonably have been anticipated at the time of the preparation of the estimate, if and when such sums are covered by their revenue earnings received up to the time of such expenditure;

(b) any sum or sums on any object not included in or estimated for in the estimate, if and when such sums can be met from ascertained savings on the estimate as a whole:

Provided that in pursuance of the provisions of this clause—

(i) not more than fifty thousand rupees shall be expended on any one object, and

Commissioners in meeting to consider and sanction estimate.

Power of Central Government to disallow estimate and return it for amendment.

Estimate to be re-submitted to Central Government after amendment.

Commissioners may cause supplementary estimate to be prepared.

Supplementary estimate to be submitted to Central Government.

Excess expenditure by Commissioners.

¹Sub-section (1) was substituted for the original sub-section (1) by s. 6 of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

²See foot-note 3 on p. 11, ante.

³Section 72A was inserted by s. 7 of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

(Chapter IV.—Of the General Powers of the Commission.—
Part V.—Of the Estimates of Income, Expenditure and
Audit.—Secs. 73-77.)

- (ii) without the sanction of the ¹[Central Government], not more than one lakh and fifty thousand rupees shall be expended in any one year.

The Commissioners shall submit annually to the ¹[Central Government] a statement of all such expenditure.

Adherence
to estimate.

73. Subject to the provisions of section 72A, no sum exceeding twenty thousand rupees shall, except in cases of pressing emergency, be expended by, or on behalf of, the Commissioners unless such sum is included in an estimate at the time in force which has been finally approved by the ¹[Central Government].

Excess
expenditure
to be reported
to Central
Government.

74. If any sum exceeding ³[twenty thousand rupees] in amount is so expended on a pressing emergency, the circumstances shall be forthwith reported by the ⁴[Chairman] to the ¹[Central Government] together with an explanation of the way in which it is proposed by the Commissioners to cover such extra expenditure.

Commis-
sioners
not to main-
tain officer
or servant
without
authority.

75. No officer or servant, as defined in section 30, may be maintained by the Commissioner, unless his salary has been provided in an estimate at the time in force.

Audit and
examination
of accounts.

76. (1) The accounts of the receipts and expenditure under this Act shall once in every year be audited, examined and laid before the ¹[Central Government].

Auditor's
report to be
delivered to
Commis-
sioners in
meeting.

(2) Within fourteen days after the audit and examination shall have been completed, the auditor shall report upon the accounts audited and examined, and shall deliver such report to the Commissioners in meeting, who shall cause the same to be deposited in the office of the Commissioners and to be published in the ⁵[Official Gazette] and in some one or more of the daily newspapers published in Calcutta.

Central
Government
to appoint
auditors.

77. The audit shall be made by such public department, or by such auditors as shall, from time to time be appointed by the ¹[Central Government].

¹See foot-note 3 on p. 11, *ante*.

²Section 73 was substituted for the former section 73 by section 8 of the Calcutta Port (Amendment) Act, 1923 (Ben. Act VI of 1923).

³These words were substituted for the words "five thousand rupees" by s. 9, *ibid*.

⁴This word was substituted for the word "Vice-Chairman" by s. 6 of Calcutta Port (Amendment) Act, 1920 (Ben. Act VII of 1920).

⁵See foot-note 4 on p. 11, *ante*.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—

Part V.—Of the Estimates of Income, Expenditure and Audit.—Part VI.—Of Landing-places and Bathing-ghats.—Secs. 78-82.)

78. (1) For the purposes of any audit and examination of accounts under this Act, the auditors may, by summons in writing, require the production before them of all books, deeds, contracts, vouchers, and all other documents and papers which they may deem necessary,

Auditors may require production of books, etc., for audit of accounts.

and may require any persons holding or accountable for any such books, deeds, contracts, accounts, vouchers, documents or papers to appear before them at any such audit and examination, or adjournment thereof and to make and sign a declaration with respect to the same.

(2) If any such person neglect or refuse so to do, or produce any such books, deeds, contracts, accounts, vouchers, documents or papers, or to make or sign such declaration, he shall be liable for every neglect or refusal to a penalty not exceeding one hundred rupees.

Penalty.

79. All auditors, not being a public department, acting under this Act, shall in respect of each audit, be paid by the Commissioners such remuneration as the ¹[Central Government] shall, from time to time, determine.

Remuneration to auditors not being a public department.

80. A copy of the accounts to be audited and examined shall be deposited in the office of the Commissioners, and thereat be open during office hours to the inspection of any person on payment of a fee of one rupee on each occasion of inspection, for seven days before the audit and examination; and all such persons shall be at liberty to take copies of, or extracts from, the same without further payment.

Accounts to be kept in office of Commissioners and to be open for inspection.

PART VI.—Of Landing-places and Bathing-ghats.

81. The Commissioners in meeting shall provide a sufficient number of public landing-places, from and upon which the public shall be permitted to embark and to land free of charge.

Commissioners in meeting to provide public landing-places.

82. It shall be lawful for the Commissioners in meeting if they consider it necessary for the purposes of this Act, to occupy or remove any bathing-ghat or landing-place within the Port; and thereafter to prohibit the public from resorting to or using the same:

Powers with respect to bathing-ghats and landing-places.

Provided that the Commissioners shall reserve, set out, make and provide for the use of the public, such sufficient bathing-ghats within the Port as the ¹[Central Government] may direct.

¹See foot-note 3 on p. 11, *ante*.

[**Ben. Act III**

(Chapter IV.—Of the General Powers of the Commission.—
Part VII.—Of the erection of Wharves, Quays, Stages, Jetties, Piers or Moorings.—Secs. 83-85.)

PART VII.—Of the erection of Wharves, Quays, Stages, Jetties, Piers or Moorings.

Wharves, etc.,
 not to be
 erected by
 private
 persons
 without
 assent of
 Central
 Government.

Penalty for
 unlawfully
 erecting
 wharves, etc.

83. It shall not be lawful for any person or persons, save the Commissioners, to make, erect or fix below high-water-mark within the Port any wharf, quay, stage, jetty, pier, erection or mooring, unless the assent of the ¹[Central Government] shall have been first obtained.

84. Any matter or thing which may be so made, erected or fixed may be removed by the Commissioners :

and the person who shall have so made, erected or fixed any such matter or thing shall be liable on conviction to a fine which may extend to one hundred rupees, and to a further fine which may extend to one thousand rupees for every day during which such matter or thing shall have been permitted to remain so made, erected or fixed after notice to remove the same shall have been given to him :

and shall also be liable to pay all expenses which may have been incurred by the Commissioners in removing such matter or thing :

Provided that this section shall not apply to moorings laid down or to be laid down by the Conservator of the Port.

Power to
 remove wharf,
 etc., if erected
 without limit
 of Port.

85. In case any wharf, quay, stage, jetty, pier, erection or mooring may have been, or shall hereafter be, made, erected or fixed below high-water-mark without the limits for the time being of the Port, and thereafter the limits of the Port shall be extended so as to include the place on which such wharf, quay, stage, jetty, pier, erection or mooring shall have been made, erected or fixed.

It shall be lawful for the Commissioners, with the sanction of the ¹[Central Government] in writing, to remove, fill up or destroy such wharf, quay, stage, jetty, pier, erection or mooring :

Provided that any person who may have lawfully made, erected, or fixed such wharf, quay, stage, jetty, pier, erection or mooring or who may have acquired a prescriptive right thereto by possession of sixty years

¹See foot-note 3 on p. 11, *ante*.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—

Part VII.—Of the erection of Wharves, Quays, Stages, Jetties, Piers or Moorings.—Secs. 86-89.)

or upwards, his representatives or assigns shall be entitled to institute a civil suit for the award of compensation to him for the injury caused by the removal, filling up, or destruction hereinbefore mentioned.

86. Whenever any wharves, quays, stages, jetties, piers, erections or moorings have, under the last preceding section, been removed, filled up or destroyed, the Commissioners shall make or provide for the use of the public such sufficient and convenient wharves, quays, stages, jetties, piers, erections or moorings, in the place of those that may be removed, filled up or destroyed, as the

Commissioners to provide wharves, etc., for use of public.

87. When the ¹[Central Government] shall, under the provisions of any Act for the regulation of duties of customs, appoint any wharf, quay, stage, jetty or pier erected or acquired under this Act for the use of sea-going vessels, to be a wharf for the landing of goods within the meaning of such enactment,

Commissioners to provide wharves, etc., for use of Customs Officers.

the Commissioners shall set apart, maintain and secure on such wharf, quay, stage, jetty or pier, such portion thereof, or place therein, or adjoining thereto, for the use of the officers of Customs, as the ¹[Central Government] shall in that behalf approve or appoint.

88. Notwithstanding that any wharf, quay, stage, jetty or pier, or portion thereof, shall, under the provisions of the last preceding section, have been set apart for the use of the officers of Customs, all tolls, dues, rates, rents or charges payable in respect thereof, or for the use thereof, or for the storage of goods thereupon, shall be paid and payable to the Commissioners, or to such person or persons as they may appoint to receive the same.

Tolls, etc., in respect of wharves, etc., set apart for Customs Officers to be paid to Commissioners.

89. (1) In case any damage or mischief shall be done to any dock, wharf, quay, stage, jetty, pier or works constructed or acquired by the Commissioners under the provision of this Act, by any vessel, through the negligence of any person having the guidance or command thereof, or of any of the mariners or persons employed therein,

Magistrate to summon masters of vessels with respect to damage caused to wharves, etc.

it shall be lawful for any Magistrate, having jurisdiction in the place where such damage or mischief is alleged to have been committed, on the application of the Commissioners, to issue a summons to the master of, or agent for, such

¹See foot-note 3 on p. 11, *ante*.

(Chapter IV.—Of the General Powers of the Commission.—
Part VIII.—Of the Landing and Shipment of Goods.—
Sec. 90.)

vessel, requiring him to attend on a day and at an hour named in the summons to answer touching such damage or mischief :

Provided that if, at the time of the damage or mischief the vessel was under the orders of a duly authorised officer belonging to the Pilot Service or the Harbour Master's or Port Officer's department, the case shall not be cognizable by the Magistrate under this section.

Magistrate to issue warrant of distress if damage to wharves, etc., caused by negligence.

(2) If at the time appointed in the summons, and whether the person summoned shall appear or not, the Magistrate finds that the alleged damage was done through such negligence as aforesaid, and that the pecuniary amount of the same does not exceed two hundred rupees,

it shall be lawful for the Magistrate to issue his warrant of distress under which a sufficient portion of the boats, masts, spars, ropes, cables, anchors or stores of the vessel may be seized and sold to cover the expenses of, and attending the execution of, the distress and the pecuniary amount of damage as aforesaid ;

and such amount shall be paid to the Commissioners out of the proceeds of distress.

PART VIII.—Of the Landing and Shipment of Goods.

Commissioners to provide for landing, etc., goods from sea-going vessels.

90. The Commissioners shall 1* * *
provide and keep and maintain sufficient servants and apparatus for the expeditious and convenient landing and shipment of goods from and upon all sea-going vessels brought to the docks, wharves, quays, stages, jetties or piers erected by them ;

and shall, by their servants ²[or agents], land and ship all goods from and upon any such vessels so coming to such dock, wharf, quay, stage, jetty or pier, unless where there is a legal excuse for refusing to land or ship such goods, or such vessel is by reason of the breach or non-observance of any law or regulation, not entitled to have her goods shipped or discharged ;

³[Provided that, in the case of cargoes of petroleum, it shall be lawful for the Commissioners not only to land the

¹The words " when thereunto required by the local Government " were repealed by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

²These words were inserted by s. 5 of the Calcutta Port (Amendment No. 1) Act, 1895 (Ben. Act IV of 1895).

³This proviso was inserted by s. 5, *ibid*.

of 1890.]

{Chapter IV.—Of the General Powers of the Commission.—
Part VIII.—Of the Landing and Shipment of Goods.—
Secs. 91-93.)

petroleum from all sea-going vessels, but also by their servants or agents to put the petroleum out of the hold and over-side such vessels] :

Provided ¹[further] that the Commissioners shall not be bound to land, ship or move any single article or package exceeding thirty tons of twenty hundredweight in weight except at such special charge as may be agreed on in respect of such article or package.

91. (1) Whenever any goods shall be landed by the Commissioners from any vessel under the powers by this Act conferred on them, they shall if thereunto required, give to the person in charge of such vessel a receipt in the form or to the effect prescribed in the ²[Second] Schedule ; and may, in any such receipt, include all goods landed from such vessel during one day.

Commissioners to grant receipts for goods landed by them.

(2) No person to whom such receipt shall have been so given, nor the master nor owner of the vessel from which the goods in respect of which such receipt shall be given may have been landed, shall be liable for any loss or damage to such goods which may occur after they shall have been so landed.

Liability for loss, etc., of goods to cease when once landed.

92. When any dock, wharf, quay, stage, jetty, or pier, erected under the provisions of this Act, shall have been made and completed, together with sufficient warehouses, sheds, cranes and moorings for landing and shipment, or for landing or for shipment of goods from and upon sea-going vessels,

Commissioners to declare when docks, etc., are ready for landing goods from sea-going vessels.

it shall be lawful for the Commissioners 3* * *
by a notification published in three consecutive numbers of the ⁴[*Official Gazette*] to declare that such dock, wharf, quay, stage, jetty or pier is ready for receiving, landing and shipment, or for landing or for shipment of goods from upon sea-going vessels.

93. From and after such notification and publication, it shall be lawful for the Commissioners to require the Conservator of the Port, or other persons exercising the rights, powers and authorities of the Conservator of the Port, from time to time, when there shall be room at such dock, wharf, quay, stage, jetty or pier, to order to come alongside of

Commissioners may order sea-going vessels to load or unload at docks, etc., when accommodation available.

¹This word was inserted by s. 5 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

²This word was substituted for the word " Third " by s. 7 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

³The words " with the sanction of the Local Government " were repealed by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

⁴See foot-note 4 on p. 11, ante.

(Chapter IV.—Of the General Powers of the Commission.—Part VIII.—Of the Landing and Shipment of Goods.—Secs. 94-96.)

such dock, wharf, quay, stage, jetty or pier for the purpose of being laden or unladen by the Commissioners, any sea-going vessel which shall not have commenced to discharge goods, or which, being about to take in goods, shall not have commenced to take in goods.

Penalty for landing for shipping goods in contravention of order.

94. If, after such order of the Conservator of the Port or other person aforesaid, the owner or master of any such ¹[vessel] shall either take in or discharge goods, save and except at such dock, wharf, quay, stage, jetty or pier to which such vessel shall have been so ordered,

the owner thereof, or, in case he shall not be in Calcutta, the master thereof, shall be liable to a penalty of one hundred rupees for each day that he shall land or ship, or attempt to land or ship, any goods in contravention of such order.

Power to direct goods not to be landed from sea-going vessels save at docks, etc., erected by Commissioners.

95. (1) When a sufficient number of docks, wharves, quays, stages, jetties or piers shall have been erected under this Act for the landing and shipment of goods of all sea-going vessels resorting to the Port, it shall be lawful for the Commissioners in meeting, with the sanction of the ²[Central Government] by an order published in three consecutive numbers of the ³[*Official Gazette*], to direct that, without the express sanction of the Commissioners, no goods shall be landed or shipped from or upon any sea-going vessel within the Port save at such docks, wharves, quays, stages, jetties or piers,

(2) and, by an order in like manner published, to alter, vary or revoke any such order.

Penalty for landing or shipping goods after publication of order.

96. Whoever shall, after such order has been so published as aforesaid, land or ship, or attempt to land or ship, any goods in contravention of such order, shall be liable to a fine not exceeding two hundred rupees for every day that he shall so land or ship any goods in contravention of the said order :

Provided that, notwithstanding anything in this or in sections 92, 93 and 94 contained, it shall be lawful for the ²[Central Government] by notification in the ³[*Official Gazette*] from time to time, if it shall so think fit, to declare that certain specified vessels or classes of vessels shall be permitted to discharge or ship goods or that certain specified goods or classes of goods shall be permitted to be landed or shipped elsewhere, and at such part of the Port

¹This word was substituted for the word "vessels" by the Amending Act, 1903 (I of 1903).

²See foot-note 3 on p. 11, *ante*.

³See foot-note 4 on p. 11, *ante*.

of 1890.]

{Chapter IV.—Of the General Powers of the Commission.—Part VIII.—Of the Landing and Shipment of Goods.—Secs. 97, 98.}

of Calcutta and for such time and on such conditions as it may think fit.

97. (1) When any dock, wharf, quay, stage, jetty or pier for receiving, landing or shipment of goods from vessels (not being sea-going vessels) shall have been made and completed with all proper appliances in that behalf,

Commissioners to declare when docks, etc., are ready for landing goods from inland vessels.

it shall be lawful for the Commissioners in meeting,
¹ * * * * by an order published in
 three consecutive numbers of the ²[*Official Gazette*], to
 declare that such dock, wharf, quay, stage, jetty or pier
 is ready for receiving, landing or shipment of goods from
 vessels (not being sea-going vessels), ³[with the sanction
 of the ⁴Central Government],

and in the same way to order that, within certain prescribed limits to be therein specified in that behalf, it shall not be lawful, without the express sanction of the Commissioners, to land or ship any goods out of, or into, any vessel (not being a sea-going vessel) of any class specified in such order, except at such dock, wharf, quay, stage, jetty or pier.

(2) and, by an order in like manner published, to alter, vary or revoke any such order.

98. Whenever any order made and published under sections 95 and 97 shall have the effect of rendering it unlawful to land or ship any goods out of, or into, any vessel at any wharf, quay, stage, jetty or pier lawfully made, erected or fixed by any person for the convenience of private traffic, or to which a prescriptive right may have been acquired by possession of sixty years or upwards,

Suit may be instituted for award of compensation.

such person, his representatives or assigns, shall be entitled to institute a civil suit for the award of compensation to him for the injury caused by the order hereinbefore mentioned :

Provided that, in awarding such compensation, the Court shall not take into consideration any tolls, dues, rates or charges which the aforesaid person claiming

¹The words "with the sanction of the Local Government" were repealed by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

²See foot-note 4 on p. 11, *ante*.

³These words were substituted for the words "and with the same sanction" by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

⁴See foot-note 3 on p. 11, *ante*.

(Chapter IV.—Of the General Powers of the Commission.—Part VIII.—Of the Landing and Shipment of Goods.—Secs. 99-102.)

compensation shall be liable to pay for using the wharf, quay, stage, jetty or pier provided by the Commissioners for public use :

Provided also that it shall be lawful for the Commissioners, in lieu of closing any wharf, quay, stage, jetty or pier under either of the said sections, to allow the continued use thereof on payment of such scale of tolls, dues, rates and charges as may be agreed upon between the owners thereof and the Commissioners.

Goods not to be landed from inland vessels save at docks, etc.

99. (1) After the publication of the order mentioned in section 97 of this Act, it shall, not be lawful for any vessel of such class to land or ship any goods at any place within the limits so specified except at such dock, wharf, quay, stage, jetty or pier ; nor for any such vessel, while within such limits, to anchor, fasten or lie within fifty yards of the ordinary low-water mark without the consent of the Commissioners.

Penalty for breach of Provisions.

(2) Any person guilty of any breach of the provisions of this section shall be liable to a fine not exceeding fifty rupees for every such breach.

Power to remove vessels lying within fifty yards of low-water-mark.

100. If, after the publication of the order mentioned in section 97 of this Act, any such vessel shall, while within such limits, so anchor, fasten or lie, it shall be lawful for the Commissioners to cause the same to be removed out of the said limits ; and it shall be the duty of the Conservator of the Port to aid and assist the Commissioners in so removing such vessel.

Commissioners may require masters to remove vessels from docks, etc.

101. The Commissioners may, by notice in writing, order the master, owner or agent of any vessel to remove such vessel from any dock, wharf, quay, stage, jetty or pier belonging to the Commissioners.

Power to charge vessels for use of docks, etc., after service of notice for their removal.

102. Unless such vessel shall be removed therefrom within thirty-six hours after service of such notice on the officer in charge of such vessel, or the master, owner or agent thereof,

it shall be lawful for the Commissioners to charge, in respect of such vessel for the use by such vessel of such dock, wharf, quay, stage, jetty or pier, such sum not exceeding five hundred rupees for each day of twenty-four hours, or portion of such day, after the expiry of such thirty-six hours, during which such vessel shall remain at such dock, wharf, quay, stage, jetty or pier as to the Commissioners shall seem fit.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Secs. 103-105.)

PART IX.—Of Levying Tolls and Rates.

103. The Commissioners shall frame a scale of tolls, dues, rates and charges for the landing and shipment of goods from and into sea-going vessels at the docks, wharves, quays, stages, jetties and piers belonging to the Commissioners, and for use thereof by such vessels, and for the storing and keeping of any goods stored in any premises belonging to them, and for the removal of goods, and for the use of any moorings laid down or acquired by the Commissioners, and for the towage of vessel by the steam-vessels of the Commissioners in the Port.

Commissioners to frame scale of tolls, etc., for landing goods from sea-going vessels.

104. The Commissioners shall also frame a scale of tolls, dues, rates and charges for the landing and shipment of goods into and out of any vessel (not being a sea-going vessel) ;

Commissioners to frame scale of tolls, etc., for landing goods into inland vessels.

1* * * * *

²104A. (1) The Commissioners shall also frame scales of tolls for the use of their docks, wharves, quays, stages, jetties and piers by vessels whether sea-going or not, leviable when the Commissioners permit goods to be landed or shipped by persons other than their own officers and servants.

Commissioners to frame scales of tolls for use of docks, etc., by vessels.

(2) The scales for sea-going vessels and vessels other than sea-going vessels may be either the same or different, as the Commissioners may think fit.

³105. The Commissioners shall also frame a scale of charges for any services to be performed by the Commissioners or their servants in respect of any vessel or goods, or for the use of any works or appliances to be provided by the Commissioners.

Commissioners to frame scale of charges for service in respect of vessel or goods, etc.

¹In s. 104 the words " and also a scale of tolls for the use of the said docks, wharves, quays, stages, jetties and piers by any such vessel, in case the Commissioners shall permit the goods to be landed or shipped by other than their own officers and servants," which were repealed by s. 3 of the Calcutta Port (Amendment No. 1) Act, 1895 (Ben. Act IV of 1895), are omitted.

²Section 104A was inserted by s. 7, *ibid.*

³Section 105 was substituted for the original section 105 by s. 4 of the Calcutta Port (Amendment No. II) Act, 1895 (Ben. Act VI of 1895).

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Secs 105A-
107.)

Charges for carrying passengers and their personal effects on Commissioners' vessels.

105A. The Commissioners shall also frame a scale of charges for the carrying of passengers and their personal effects on vessels belonging to or hired by the Commissioners.

Commissioners to frame scale of tolls, rates, charges and fees in respect of vessels plying within limits of port and respect of persons thereon.

106. The Commissioners shall also frame a scale of tolls, ²[rates, charges and fees], annual or other, to be paid by the owners of ³* * vessels plying ⁴[whether for hire or not, and] whether regularly or occasionally within, or partly within and partly without, the limits of the port ⁵[in respect of such vessels and of persons whether in charge of, or on board, such vessels, and also in respect of the licensing, registration and regulation of such vessels and persons] :

Provided that no such tolls, ²[rates, charges and fees] shall be chargeable in respect of vessels which are liable to pay port dues under the provisions of Schedule I of the Indian Ports Act, 1889.⁶

X of 1889.

Scale of tolls, etc., to be published after approval by Central Government.

107. (1) Such scales of tolls, dues, rates and charges shall be adopted by the Commissioners in meeting, and shall be submitted to the ⁷[Central Government]; and after receiving its approval shall be published by the Commissioners in the ⁸[*Official Gazette*], and may from time to time, subject to the like approval and publication, be in like manner altered.

Power of Central Government to cancel scale of tolls, etc.

(2) It shall also be competent to the ⁷[Central Government] at any time to cancel any of the scales framed under sections 103 to 106 (both inclusive), or to call upon the Commissioners to modify any portion of such scales; and thereupon the Commissioners in meeting shall modify such scales accordingly.

¹Section 105A was inserted by s. 5 of the Calcutta Port (Amendment) Act, 1905 (Ben. Act IV of 1905).

²These words were inserted by s. 8 of the Calcutta Port (Amendment No. 1) Act, 1895 (Ben. Act IV of 1895).

³The word "any" was repealed, *ibid.*

⁴These words were substituted for the words "for hire" by s. 6 of the Calcutta Port (Amendment) Act, 1905 (Ben. Act IV of 1905).

⁵These words were inserted by s. 8 of the Calcutta Port (Amendment No. 1) Act, 1895 (Ben. Act IV of 1895).

⁶Act X of 1889 has been repealed and re-enacted by the Indian Ports Act, 1908 (XV of 1908), and this reference should now be construed as a reference to the latter Act.

⁷See foot-note 3 on p. 11, *ante*.

⁸See foot-note 4 on p. 11, *ante*.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.
—Part IX.—Of Levying Tolls and Rates.—Secs. 108, 109.)

108. ¹[The Commissioners may from time to time] charge upon all ²[or any portion or description of] goods landed from or shipped into any ³[sea-going] vessel lying or being within the limits of the port, whether such goods shall or shall not be so landed or shipped at any dock, wharf, quay, stage, jetty or pier belonging to the Commissioners, such ⁴[general or differential] tolls, dues, rates and charges, in addition to, or other than, those prescribed by any scale of tolls, dues, rates and charges for the time being in force under the provisions of section 103, ⁵[104A] ⁶[and] 107 * * ⁸[as the Commissioners may think fit and expedient]:

Power of Commissioners to charge additional, general or differential tolls, etc., on all or any portion or description of goods, to provide for payment of debt.

⁹[Provided that the said goods may, for the purpose of this section, be classified by weight, measurement, number and value, and the tolls, dues, rates and charges leviable may be varied according as the goods are imported or exported goods.]

109. Such ¹⁰[additional general or differential] tolls, dues, rates and charges shall be fixed and adopted in accordance with a resolution passed by the Commissioners at a meeting, and shall be submitted to the ¹¹[Central Government]: and if the same shall be approved by it it shall be published in the ¹²*Official Gazette*, and shall forthwith come into operation and remain in operation until altered or revoked by the Commissioners in meeting, with the sanction of the ¹⁴[Central Government]; and shall be leviable and recoverable in like manner as any other tolls, dues, rates and charges payable under this Act.

Mode of levy and recovery of additional, general or differential tolls, etc.

¹These words were substituted for the original words by s. 8(1) of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

²These words were inserted by s. 9 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

³This word was inserted *ibid.*

⁴These words were inserted *ibid.*

⁵This reference to s. 104A was inserted, *ibid.*

⁶This word was substituted for "to" *ibid.*

⁷The words "(both inclusive)" were repealed, *ibid.*

⁸These words were substituted for the words "as will, when added to the said income of the year, suffice as nearly as may be for the payment of the said sums in full" by s. 8(2) of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

⁹This proviso was added by s. 9 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

¹⁰These words were inserted by s. 10, *ibid.*

¹¹See foot-note 3 on p. 11, *ante*.

¹²See foot-note 4 on p. 11, *ante*.

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Secs. 110-112.)

110. [Power of Local Government to charge tolls, etc., on neglect of Commissioners to do so.] Rep. by s. 9 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

Recovery of tolls
in arrear.

111. (1) For the amount of all tolls, dues, rates and charges duly leviable under this Act in respect of any goods, the Commissioners shall have a lien on such goods, and shall be entitled to seize and detain the same until such tolls, dues, rates and charges are fully paid.

(2) Toll, dues, rates and charges in respect of goods to be landed shall become payable immediately on the landing of the goods.

(3) Toll, dues, rates and charges in respect of goods to be removed from the premises of the Commissioners or to be shipped for export, shall be payable before the goods are removed or shipped.

(4) The lien for such tolls, dues, rates and charges shall have priority over all other liens and claims, except for general average, for the ship-owners' lien for freight upon the said goods where such lien exists and has been preserved in the manner hereinafter provided, for primage, and for money payable to [the Crown] under any law for the time being in force :

Provided that nothing in this Act shall affect any power or authority vested in the Chief Officer of Customs under any law for the time being in force.

Responsibility
of Commissioners
for loss,
destruction or
deterioration of
animals or goods.

112. (1) The responsibility of the Commissioners for the loss, destruction or deterioration of animals or goods, whether landed for import or received for export or for carriage by railway,

during such time as the same remain in the possession or under the control of the Commissioners,

shall, subject to the other provisions of this Act, and, in the case of animals or goods received for carriage by railway, subject also to the provisions of the Indian Railways Act, 1890, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words "in the absence of any special contract" in section 152 of the last-mentioned Act.

IX of 1890.

IX of 1872.

¹These words were substituted for the words "Her Majesty or the Secretary of State for India in Council" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Section 112 was substituted for the original s. 112 by s. 2 of the Calcutta Port (Amendment) Act, 1898 (Ben. Act II of 1898).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Secs. 113-115.)

(2) With the previous sanction of the ¹[Central Government] and under such circumstances and conditions as the ¹[Central Government] may prescribe, the Commissioners may enter into an agreement relating to animals or goods landed for import or received for export or for carriage by railway, which may impose upon the Commissioners a greater responsibility than that imposed by sub-section (1).

(3) Every such agreement must be in writing and must be signed by, or on behalf of, the Commissioners.

113. (1) The Commissioners shall, immediately upon the landing ²[by them] of any goods, take charge thereof, and store such as are liable to suffer from exposure in any shed or warehouse belonging to the Commissioners.

Commissioners to take charge of goods landed by them.

(2) If any owner, without any default on the part of the Commissioners, fail to remove any goods ³[other than those stored in warehouses licensed under section 16 of the Sea Customs Act, 1878,] from the premises of the Commissioners within ⁴[three] clear working days from the time of landing, such goods shall remain on the premises at the sole risk and expense of the owner.

Goods not stored in licensed warehouses to remain at risk and expense of owner if not removed within three days.

114. (1) Whenever the owner of any goods ³[other than those stored in warehouses licensed under section 16 of the Sea Customs Act, 1878,] fails to remove the same within the time specified in the last preceding section, the Commissioners shall give notice to the consignee or owner of such goods, if his address be known, by letter sent by post to such address or left thereat, that all liability which the Commissioners may have hitherto incurred in respect of such goods has ceased ;

Commissioners to give notice to consignee, etc., of cessation of liability,

(2) and shall also publish in one or more daily newspapers notice of the expiry of such liability ; and shall specify therein the numbers, marks and descriptions of such goods, so far as the same may appear.

also to publish notice of expiry of such liability.

115. In case the said goods ³[other than those stored in warehouses licensed under section 16 of the Sea Customs Act, 1878,] shall be removed to the public warehouses, then

Liability of consignee or owner with respect to goods stored in public warehouses.

¹See foot-note 3 on p. 11, *ante*.

²These words were inserted by s. 2 of the Calcutta Port (Amendment) Act, 1894 (Ben. Act II of 1894).

³These words were inserted by ss. 11, 12 and 13 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

⁴This word was substituted for the word "two" by s. 3 of the Calcutta Port (Amendment) Act, 1898 (Ben. Act II of 1898).

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Secs. 116-118.)

the consignee or owner shall be liable to the charges for warehousing goods in such public warehouses; and goods shall remain subject to all liens to which they would have been liable if they had remained in the possession of the Commissioners, and to the power of sale hereinafter given.

Lien for freight preserved after landing of goods, if notice of lien be given.

116. (1) If the master or owner of any vessel, or his agent, at or before the time of landing from such vessel and goods at any dock, wharf, quay, stage, jetty or pier belonging to the Commissioners shall give to the Commissioners notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the shipowner, to an amount to be mentioned in such notice, such goods shall continue liable to the same lien (if any) for such charges as they were subject to before the landing thereof.

Goods to be retained in warehouses and sheds until discharge of lien.

(2) Such goods shall be retained either in the warehouses and sheds of the Commissioners or in warehouses licensed under section 16 of the Sea Customs Act, 1878, or with the consent of the Chief Officer of Customs, in the public warehouses at the risk and expense of the owners of the goods, until the lien is discharged as hereinafter mentioned.

VIII of
1878.

Commissioners may permit goods to be removed without regard to lien.

117. Upon the production to the officer of the Commissioners in that behalf of a document purporting to be a receipt for the amount claimed as due, or a release of freight, from the person by or on whose behalf such notice shall have been given, it shall be lawful for the Commissioners to permit such goods to be removed without regard to such lien :

Provided they shall have used reasonable care in respect to the authenticity of such document.

Power of Commissioners to sell goods by public auction.

118. If the tolls, dues, rates and charges payable to the Commissioners in respect of any goods under this Act are not paid,

or if the lien of the shipowner for freight, where such notice as aforesaid has been given, is not discharged,

the Commissioners may, and, in the latter event, if required by or on behalf of the person claiming such lien for

¹Section 116 was substituted for the former section 116 by s. 5 of the Calcutta Port (Amendment No. II) Act, 1895 (Ben. Act VI of 1895).

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—

Part IX.—Of Levying Tolls and Rates.—Secs. 119, 120.)

freight, shall, at the expiration of two months from the time when the goods were placed in their custody, or, if the goods are of a perishable nature, at such earlier period, being not less than twenty-four hours after the landing of the goods as they shall think fit,

sell by public auction the said goods or so much as may be necessary to satisfy the amounts hereinafter directed to be paid out of the produce of such sale.

119. (1) Before making such sale, ten days' notice of the same shall be given by publication thereof in the *Calcutta Gazette*,

Notice to be given before sale of goods.

unless the goods are of so perishable a nature as, in the opinion of the officer of the Commissioners in that behalf, to render immediate sale necessary or advisable, in which event such notice shall be given as the urgency of the case admits of.

(2) If the address of the owner of the goods has been stated on the manifest of the goods or in any of the documents which have come into the hands of the Commissioners, or is otherwise known, notice shall also be given to the owner of the goods by letter delivered at such address or sent by the post ;

Notice to be given to owner by letter if address be known.

but the title of a *bona fide* purchaser of such goods shall not be invalidated by reason of the omission to send the notice hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

120. (1) In every case of any such sale as aforesaid, the moneys received from the sale shall be applied as follows :—

Application of proceeds of sale.

- (a) in payment of the expenses of the sale ;
- (b) in payment, according to their respective priorities, of the liens and claims excepted in section 111 from the priority of the liens of the Commissioners for tolls, rates and dues ; and
- (c) in payment of the tolls, charges and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Commissioners under this Act in respect thereof.

(Chapter IV.—Of the General Powers of the Commission.—
Part IX.—Of Levying Tolls and Rates.—Secs. 121, 122.)

Surplus of
sale-proceeds
to whom to be
paid.

(2) The surplus, if any, shall be paid to the importer, owner or consignee of the goods, or to his agent, on his applying for the same :

Provided that such application be made within one year from the sale of the goods, or good reason be shown why such application was not so made to the satisfaction of the Commissioners ; and in case such application shall not be so made, nor reason shown, such surplus shall be held by the Commissioners upon trust for the purposes of this Act.

Power of
Collector of
Customs to
distrain
vessels for
non-payment
of tolls.

121. If the master of any vessel in respect of which any tolls, dues, rates, penalties or charges shall be payable under this Act, or any rules or orders made in pursuance thereof, shall refuse or neglect to pay the same or any part thereof on demand,

it shall be lawful for the Commissioners to apply to the Collector of Customs of the Port of Calcutta ;

and such Collector shall distrain or arrest of his own authority such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Commissioners shall be paid ;

and in case any part of the said tolls, dues, rates, penalties or charges, or of the cost of the distress or arrestment, or of the keeping of the same, shall remain unpaid for the space of five days next after any such distress or arrestment shall have been so made, the Collector of Customs may cause the vessel or other things so distrained or arrested to be sold,

and with the proceeds of such sale may satisfy such tolls, dues, rates, penalties or charges, and costs, including the costs of sale remaining unpaid ; rendering the surplus (if any) to the master of such vessel on demand.

Port clearance
not to be
granted
until tolls,
etc., are
paid.

122. If the Commissioners shall give to the ¹[officer of the Crown], whose duty it shall be to grant the port clearance of any vessel, a notice stating that an amount therein specified is due in respect of tolls, dues, rates or charges, or penalties chargeable under this Act or any by-laws, rules or orders made in pursuance thereof, against such vessel, or the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel,

such officer shall not grant such port clearance until the amount so chargeable shall have been paid.

¹These words were substituted for the words " officer of Government " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1890.]

(Chapter IV.—Of the General Powers of the Commission.—

Part IX.—Of Levying Tolls and Rates.—Chapter V.—

Of the Powers of the Commissioners as Conservators of the Port.—Secs. 122A-123.)

VIII of
1878.

1122A. (1) All warehouses of the Port Commissioners shall be deemed to be private warehouses and capable of being licensed as such under section 16 of the Sea Customs Act, 1878; and all the provisions of that Act relating to licensed private warehouses shall be applicable to all such warehouses. Warehouses may be made bonded warehouses, and warrants may be granted.

(2) The warrants delivered under section 96 of the Sea Customs Act, 1878, shall, in the case of the said warehouses, be signed by the Commissioners or some person duly authorized by them in that behalf.

1122B. It shall be lawful for the Commissioners to give, in the manner provided by section 53, general security, by bond or otherwise, for payment of the import duty due on goods stored in bonded warehouses, or for the due exportation of such goods. When such security shall have been given by the Commissioners, no further security shall be required by the Chief Customs Authority from any other person to the same effect. Commis-sioners may give security for duty on bonded goods.

1122C. The Commissioners shall not be liable to compensate the owners of petroleum stored in any warehouse licensed under section 16 of the Sea Customs Act, 1878, for any loss by fire, however, arising, or for any deterioration or damage or diminution in quantity by leakage or otherwise, unless such deterioration, damage or diminution has been caused by the negligence of the Commissioners or their servants. Commis-sioners may store goods in bonded warehouses.

CHAPTER V.

OF THE POWERS OF THE COMMISSIONERS AS CONSERVATORS OF THE PORT.

123. (1) Any port dues, fees or other charges received by the Commissioners as Conservators of the Port shall be deemed to be a portion of their income, and shall be included in their annual estimates and accounts. Port dues received by Commis-sioners as Conservators of Port to form part of their income.

(2) All the powers, authorities and restrictions contained in this Act in respect of the works by this Act authorized, shall apply to the works which may be Powers, etc., of Commis-sioners as Conservators.

¹Sections 122A, 122B and 122C were inserted by s. 15 of the Calcutta Port (Amendment No. I) Act, 1895 (Ben. Act IV of 1895).

(Chapter V.—Of the Powers of the Commissioners as Conservators of the Port.—Chapter VI.—Of Wrecks.—Chapter VII.—Of By-Laws.—Secs. 124-126.)

executed by the Commissioners as such Conservators, to the sanction thereof, the estimates therefor, and the expenditure thereunder.

Port dues,
etc., received by
Commissioners
as Conservators
to be included
in debt to
Government.

124. Whenever the ¹[Central Government] shall, under the provisions of the Indian Ports Act, 1889², issue an order which shall specify the amount of charge to which the Commissioners shall be liable in respect of the port dues and fees to be received by them as Conservators of the Port, the same shall be deemed to be a sum of money advanced by the ³[Central Government], and to be due on the day on which such order shall take effect. X of 1889.

CHAPTER VI.

OF WRECKS.

Commissioners
to exercise
functions of
Receiver of
Wreck.

125. The Commissioners shall, if and when appointed under the provisions of section 73⁴ of the Indian Merchant Shipping Act, 1880, to be Receivers of Wreck within the limits of their jurisdiction, exercise within such limits all the functions of a Receiver of Wreck under the said Act. VII of 1880.

CHAPTER VII.

OF BY-LAWS.

Power to make,
alter or repeal
by-laws.

126. (1) It shall be lawful for the Commissioners in meeting, from time to time, to make such by-laws consistent with this Act and with the Indian Ports Act, 1889², as they may think necessary for any of the following purposes (that is to say) :— X of 1889.

- (a) for regulating, declaring and defining the docks wharves, quays, stages, jetties and piers on and from which goods shall be landed from, and shipped in, vessels within the port ;

¹See foot-note 3 on p. 11, *ante*.

²Act X of 1889 has been repealed and re-enacted by the Indian Ports Act, 1908 (XV of 1908), and this reference should now be construed as a reference to the latter Act.

³These words were substituted for the words "Secretary of State for India in Council" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Act VII of 1880 has been repealed and re-enacted by the Indian Merchant Shipping Act, 1923 (XXII of 1923), and this reference should now be construed as a reference to s. 273 of the latter Act.

⁵Section 126 was substituted for the former section 126 by s. 6 of the Calcutta Port (Amendment No. II) Act, 1895 (Ben. Act VI of 1895).

of 1890.]

(Chapter VII.—Of By-Laws.—Sec. 126.)

- (b) for regulating the manner in which, and the conditions under which, the loading and discharging of all vessels within the port shall be carried out ;
- (c) for the safe and convenient use of such docks, wharves, quays, stages, jetties and piers, and of landing-places, ¹[shelters for passengers], warehouses, warehouses licensed under section 16 of the Sea Customs Act, 1878, sheds and other works in and adjoining the same ;
- (d) for regulating the reception and removal of goods within and from the premises of the Commissioners, and for declaring the procedure to be followed for taking charge of goods which may have been damaged before landing, or may be alleged to be so damaged ;
- (e) for the mode of payment of tolls, dues, rates and charges levied under this Act ;
- (f) for the removal of wrecks from the port or the river, and keeping clean the port, the river, the bank of the river, and the works of the Commissioners, and for preventing filth and rubbish being thrown therein or thereon ;
- (g) for regulating the hours during which European seamen and apprentices shipped on the same footing as European seamen may be employed on board ships lying in the port, or on docks, wharves, quays, stages, jetties and piers, in work necessitating exposure to the sun ;
- (h) for the guidance of persons employed by them under this Act ; and
- (i) for otherwise carrying out the purposes of this Act.

(2) The Commissioners in meeting may, from time to time repeal, alter, or add to any by-law made under this section.

(3) No by-law, repeal or alteration of any by-law shall have effect until the same is confirmed by the ²[Central Government].

¹These words were inserted by s. 2 of the Calcutta Port (Amendment) Act, 1926 (Ben. Act I of 1926).

²See foot-note 3 on p. 11, *ante*.

(Chapter VII.—Of By-Laws.—Chapter VIII.—Of the Constitution and Control of Port Police Force.—Secs. 127-131.)

(4) No by-law and no repeal or alteration of, or addition to, any by-law, shall be confirmed until the same has been published in three consecutive numbers of the ¹[*Official Gazette*].

Penalty for infringement of by-laws.

127. In making any by-law under the last preceding section, the Commissioners in meeting may direct that a breach of it shall be punishable with fine which may extend to five hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to two hundred rupees for every day after the first during which the breach continues.

By-laws and tables of tolls, etc., to be printed and hung up at docks, etc.

128. The Commissioners shall cause the said by-laws, and the tables of tolls, dues, rates and charges leviable, to be printed in the English and Bengali languages and characters, and to be hung up at the several docks, wharves, quays and jetties, and other convenient places on the premises of the Commissioners.

CHAPTER VIII.

OF THE CONSTITUTION AND CONTROL OF PORT POLICE FORCE.

Constitution of Port Police Force.

129. A Police Force shall be formally enrolled for the Port of Calcutta, to be styled the "Port Police Force," and shall consist of a special Superintendent to be called the "Superintendent of Port Police," and such number of officers and men as the ²[Central Government] shall, from time to time, direct.

Port Police Force to be under control of Commissioner of Police.

130. The Port Police force shall be under the direction and control of the Commissioner of Police for Calcutta, and shall form a portion of the Police Force of Calcutta, and shall be subject to the provisions of the Calcutta Police Act, 1866.

**Bon. Act
IV of 1866.**

Superintendent of Port Police to act under control of Commissioner of Police.

131. The Superintendent of Port Police shall, in all matters connected with the prevention of crime, and the detection, apprehension and detection of offenders in order to their being brought before a Magistrate, and the preservation of the public peace, act under the direct control of the Commissioner of Police for Calcutta.

¹See foot-note 4 on p. 11, *ante*.

²See foot-note 3 on p. 11, *ante*.

of 1890.]

(Chapter VIII.—Of the Constitution and Control of Port Police Force.—Chapter IX.—Of the Port Police Budget.—Chapter X.—Miscellaneous.—Secs. 132-135.)

X of 1889. **132.** The Superintendent of Port Police shall submit daily reports to the Commissioner of all offences (if any) committed contrary to the provisions of this Act, or of the Indian Ports Act, 1889¹, or of any Port rules and by-laws in force prescribed in accordance therewith, and of all accidents occurring on the river within the limits of the Port.

Superintendent of Port Police to submit daily reports of offences.

CHAPTER IX.

OF THE PORT POLICE BUDGET.

133. (1) The Commissioner of Police, on or before the first day of January in each year, shall transmit to the Commissioners a budget or estimate of the expenses of the Port Police Force for the financial year commencing on the first day of April then next ensuing.

Commissioner of Police to submit budget or estimate of Port Police Force to Commissioners.

(2) The Police Budget shall show the various heads of expenditure of the Police Force.

134. (1) The Chairman shall lay every such budget before the Commissioners at the first meeting of the Commissioners held after such budget has been transferred.

Budget when to be laid before Commissioners.

(2) The Commissioners shall thereupon forward such budget to the ²[Central Government], with such remarks as to them may seem fit; and it shall be in the ³[power] of the ²[Central Government] to pass, or to reject, or to modify, all or any sums entered in the same ⁴[as it thinks fit].

Budget to be submitted to Central Government.

(3) The amount of the estimates passed, or such proportion of the same as shall be fixed upon by the ²[Central Government], shall be paid to such officer as the ²[Central Government] may from time to time direct, by the Commissioners.

Amount of estimates passed to be paid to officer appointed by Central Government.

CHAPTER X.

MISCELLANEOUS.

135. The Commissioners shall not be answerable for any act or default of any Conservator or Harbour Master of the Port, or of any Deputy or Assistant of the said officers, or of any person acting under the authority or directions

Indemnity to Commissioners against default of officers, etc.

¹Act X of 1889 has been repealed and re-enacted by the Indian Ports Act, 1908 (XV of 1908), and this reference should now be construed as a reference to the latter Act.

²See foot-note 3 on p. 11, *ante*.

³This word was substituted for the word "discretion" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were inserted, *ibid*.

(Chapter X.—Miscellaneous.—Secs. 136-138.)

of any such officer or assistant, heretofore or hereafter done within the limits of the Port ;

nor for any damage or injury heretofore or hereafter sustained by any vessel in consequence of any defect in any of the moorings, hawsers, or other thing belonging to the Commissioners within the Port which may be used by such vessel :

Provided that nothing in this section shall protect the said Commissioners from an action in respect of any act done by, or under the express order or sanction of the said Commissioners.

Penalty for
accepting
illegal grati-
fication.

136. If any person employed under this Act, not being a public servant within the meaning of section 21 of the Indian Penal Code,

Act XLV
of 1860.

shall accept or obtain, or agree to accept or attempt to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration as a reward for doing or forbearing to do any official act, or for showing or forbearing to show in the exercise of his official functions favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person with the Commissioners or with any public servant or with the Government as such,

he shall be liable to the same punishment as is provided for in that behalf by the Indian Penal Code in the case of public servants.

Penalty for
committing
certain
nuisances on
docks, etc.

137. Any person who wilfully deposits, or permits his servants to deposit any dust, dirt, dung, ashes, refuse or filth of any kind, or any animal matter, or any broken glass, earthenware or rubbish, in or upon any dock, wharf, quay, stage, jetty or pier belonging to the Commissioners, or in or upon any part of the river bank within the Port, shall be liable to a fine not exceeding ten rupees for each offence.

Jurisdiction
in case of offences
committed
within
Calcutta.

138. (1) Every charge of an offence against any provision of this Act, or of any rule, order or by-law made under the provisions of this Act, alleged to have been committed within Calcutta may be instituted before any Magistrate having jurisdiction, who may summon the person charged to appear at a time and place to be mentioned in the summons ;

of 1890.]

(Chapter X.—Miscellaneous.—Secs. 139-142.)

and if such person do not appear, the Magistrate may upon proof of service of the summons, if no sufficient cause shall be shown for the non-appearance of the person charged, proceed to hear and determine the case in his absence.

Act X of 1882.

(2) If such person do appear, then the procedure laid down in the Code of Criminal Procedure, 1882¹, from sections 242 to 248 (both inclusive), shall be followed.

139. Every charge of an offence against the provisions of this Act, or of any rule, order or by-law made under the provisions of this Act, alleged to have been committed out of Calcutta, may be heard and determined by any officer authorized to exercise any of the powers of a Magistrate in the place in which such offence may be alleged to have been committed, according to the provisions of the Code of Criminal Procedure, 1882².

Jurisdiction in cases of offences committed out of Calcutta.

Act X of 1889.

140. It shall be the duty of all police-officers, whether members of the Port Police Force or not, to give immediate information to the Commissioners of any offence committed contrary to the provisions of this Act, or of the Indian Ports Act, 1889³, or of any by-laws or rules having the force of law prescribed in accordance therewith.

Police-officers to give immediate information of certain offences.

141. (1) Any such police-officer may arrest any person committing in his view any offence against any of the said provisions, if the name and address of such person be unknown.

Police-officer may arrest persons committing nuisances.

(2) Such person may be detained at the station-house until his name and address shall be correctly ascertained.

142. No suit shall be brought against any person for anything done, or purporting or professing to be done, in pursuance of this Act, after the expiration of three months from the day on which the cause of action in such suit shall have arisen.

Time allowed for institution of suits.

¹Act X of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (Act V of 1898), and this reference should now be taken to be made to sections 242 to 248 (both inclusive) of the latter Act.

²This reference should now be taken to be made to the Code of Criminal Procedure, 1898 (Act V of 1898).

³Act X of 1889 has been repealed and re-enacted by the Indian Ports Act, 1908 (XV of 1908), and this reference should now be construed as a reference to the latter Act.

[Ben. Act III of 1890.]

(First and Second Schedules.)

FIRST SCHEDULE.

(See Section 2.)

Acts of the Lieutenant-Governor of Bengal in Council.

Number and year.	Subject.	Extent of repeal.
Act V of 1870 ..	To appoint Commissioners for making improvements in the Port of Calcutta.	So much as has not been repealed.
Act IV of 1879 ..	To provide for the levy of fees upon certain passenger boats and steam-ferries.	The whole.
Act IV of 1880 ..	For amending the Calcutta Port Improvement Act, 1870.	So much as has not been repealed.
Act I of 1881 ..	To amend the Calcutta Port Improvement Act (Amendment Act), 1880.	The whole.
Act II of 1883 ..	To amend the Calcutta Port Improvement Act, 1870.	Ditto.
Act II of 1885 ..	To enable the Commissioners for the Port of Calcutta to construct docks.	Ditto.
Act III of 1887 ..	To amend the Calcutta Port Improvement Act, 1870.	Ditto.

1[* * * * * *]

²SECOND SCHEDULE.

(See section 91.)

*Form of Receipt for Goods.**By the Commissioners ³[of] the Port of Calcutta.*

LANDED during the day of from the
by the Commissioners ³[of] the Port of Calcutta the
noted in the margin (if there be any apparent injury this
is to be stated), contents and state of the contents unknown.

For the Commissioners ³[of] the Port of Calcutta.

CALCUTTA ;

A. B.

day of 19 .

¹The original Second Schedule was repealed by the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907) and is omitted.

²This Schedule was originally numbered "third Schedule" and has now been re-numbered "Second Schedule" by s. 10 of the Calcutta Port (Amendment) Act, 1907 (Ben. Act II of 1907).

³Sic Read for—See s. 4.

Bengal Act I of 1893.

(The Licensed Warehouse and Fire-Brigade Act, 1893.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

PREAMBLE.

SECTION.

1. Title and application.
(Commencement.) *Repealed.*
 2. Repeal.
Saving clause.
 3. Definitions.
-

CHAPTER II.

LICENSED WAREHOUSES.

4. Warehouse not to be used till licensed.
 5. License of previously licensed building or place.
 6. License of new warehouse.
 7. Period for disposal of application for license.
 8. Term and conditions of license.
 9. Special Committee may exercise powers of Chairman.
 10. Annual fee of license.
 11. Change in occupation of warehouse to be notified.
 12. Chairman may apply to Magistrate to suspend license of warehouse.
 13. Magistrate may cancel or suspend license.
-

CHAPTER III.

PENALTIES.

14. Penalty for not taking out license.
15. Penalty for using warehouse after refusal, etc., of license.
16. Penalty for breach of conditions of license.
17. Penalty for neglecting to notify change in occupation of warehouse.
18. Penalty for giving false information to Chairman respecting license.
19. Penalty for preparing, etc., inflammable substance on roof of building.
20. Penalty for using as residence any warehouse used for pressing jute or cotton.
21. Penalty for using matches or artificial light in warehouse.
22. Penalty for smoking within warehouse.

CHAPTER IV.**FUNDS.****SECTION.**

23. Commissioners to meet cost of fire-brigade.
24. Cost of fire-brigade how to be met.
25. Rates may also be levied to provide for cost of fire-brigade.
26. Commissioner of Police to prepare annually budget or estimate of receipts and expenditure of fire-brigade.
27. Sums to be appropriated as an asset of Fire-Brigade Fund.
28. Mode of recovery of rates levied under section 25.
29. Provincial Government to fix proportionate liability for cost of fire-brigade to be borne by Commissioners.

CHAPTER V.**FIRE-BRIGADE.**

30. Commissioner of Police to maintain fire-brigade for Municipalities.
31. Power of Provincial Government to make orders with respect to fire-brigade.
32. Commissioner of Police, etc., may exercise certain powers on occasion of a fire.
33. Police-officers to aid fire-brigade in execution of its duties.
34. Non-liability of police-officer, etc., to damages.
35. Chief officer of brigade to inquire into origin of fire and to make report to Magistrate.

CHAPTER VI.**FIRE-WORKS, ETC.**

36. Penalty for letting off rockets, etc., and selling fire-works without license.
37. Power of Commissioner of Police to withdraw or suspend license.
38. Magistrate of Howrah to exercise certain powers of Commissioner of Police.
39. Penalty on house-holder for allowing rockets, etc., to be let off within premises without express permission.

CHAPTER VII.**MISCELLANEOUS.**

40. Provincial Government may declare other building or place to be a warehouse.
41. Report respecting licenses for warehouses, etc., to be submitted to Provincial Government.
42. Police-officer may arrest offenders under section 36 and convey them before Magistrate.
43. Time within which offenders should be conveyed before Magistrate.
44. Form of license for warehouse.
45. Act not applicable to buildings where small quantities of jute, etc., are deposited.
46. Repeal of sections 347 of Bengal Act II of 1888 and 261 of Bengal Act III of 1884.

Bengal Act I of 1893.

(The Licensed Warehouse and Fire-Brigade Act, 1893).¹

(28th June 1893.)

*An Act for the licensing of Warehouses and the maintenance
of a Fire-Brigade.*

Whereas it is expedient to make provision for the licensing of warehouses and the maintenance of a Fire-Brigade ;

Preamble.

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Licensed Warehouse and Fire-Brigade Act, 1893.

Title and
application.

Ben.
Act III of
1923.

(2) It applies to Calcutta, as defined by the ²[Calcutta Municipal Act, 1923] and to such portions of the Suburbs thereof as are for the time being subject to the operation of Bengal Act II of 1866³ ; also to the municipality of Howrah, and to any other municipality in the neighbourhood of Calcutta or Howrah to which its provisions may be extended by an order of the ⁴[Provincial Government] to be published in the ⁵[*Official Gazette*].

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see Calcutta Gazette*, 1892, Pt. IV, p. 3 ; for Report of Select Committee, *see ibid.*, 1893, Pt. IV, p. 2 ; and for proceedings in Council, *see ibid.*, 1892, Supplement, pp. 771, 1154, 1252, 1488 and 2160 ; *ibid.*, 1893, Supplement, pp. 348, 446, 532, 556, 612 and 720.

LOCAL EXTENT.—This Act applies to the Calcutta and Howrah Municipalities, and may be extended to other municipalities in the neighbourhood of Calcutta or Howrah—*see* s. 1(2).

²These words and figure were substituted for the words and figure “Calcutta Municipal Consolidation Act, 1888” by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³The Calcutta Suburban Police Act, 1866.

⁴These words were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words “*Calcutta Gazette*”, *ibid.*

[Ben. Act I

(Chapter I.—Preliminary.—Secs. 2, 3.)

(3) (*Commencement*). Repealed by the Amending Act, 1903 (1 of 1903).**Repeal.****2.** (1) Act IV of 1883¹ is hereby repealed :**Saving clause.**

(2) But all rules, orders, declarations, financial arrangements and appointments made under the said Act and which are now in force, shall be deemed to have been made under this Act, so far as they are not inconsistent with the provisions thereof.

Definitions.**3.** In this Act, unless there is something repugnant in the subject or context,—(1) “*bustee land*” means land which the owner lets out for the building of huts, in such manner that the tenant of the land is the owner of the hut :and “*hut*” includes any structure erected on such land, whether roofed with tiles or otherwise, and whether constructed with bricks, earth or other materials :(2) “*Cotton*” means loose raw cotton :(3) “*jute*” means raw jute, either loose or in drums, and loose jute-cuttings and rejections :(4) “*Magistrate*” means and includes a Presidency Magistrate and a Magistrate of the first class :(5) “*person*” includes an undivided Hindu family,² a firm or company or association of individuals whether incorporated or not :(6) “*the Commissioner of Police*” means the officer vested with the administration of police in the town of Calcutta under the Calcutta Police Act, 1866, and any Act amending the same :Ben.
Act IV of
1866.(7) “*the Commissioners*” mean, in respect of Calcutta, the Corporation of Calcutta ; and in respect of Howrah and the other municipalities to which this Act applies or may hereafter be extended, the Municipal Commissioners or each of the municipalities concerned :¹The Licensed Warehouse and Fire Brigade Act, 1883.
²*Sic* Read and a firm.

of 1893.]

(Chapter II.—*Licensed Warehouses.*—Secs. 4-6.)

(8) "warehouse" means any building or place, used for the storing, pressing, or keeping of jute, cotton, resin, varnish, pitch, tar, hay, straw, rags, tallow, wood or other inflammable substance or thing for the time being subject to the operation of this Act.

CHAPTER II.

LICENSED WAREHOUSES.

4. ¹No building or place shall be used as a warehouse, unless the owner or occupier thereof shall have previously obtained a license from the Commissioners for such use under this Act.

Warehouse not to be used till licensed.

5. The owner or occupier of any building or place, for which there ²[was in existence on the thirty-first day of March, 1893, or on the date of the commencement of this Act] a license granted under the Jute Warehouse and Fire-Brigade Act of 1872³ or 1879³, or the Licensed Warehouse and Fire-Brigade Act of 1883,³ shall, upon application in writing to the Chairman of the Commissioners, be entitled to obtain a license from the Commissioners therefor as a warehouse under this Act, subject to the payment to the Commissioners of such annual fee as is hereinafter provided.

License of previously licensed building or place.

Ben.
Act II of
1872.
Ben.
Act V of
1879.
Ben.
Act IV of
1883.

6. Any person proposing to use any building or place as a warehouse within the area to which this Act applies or may hereafter be extended, and who, at the commencement of this Act, does not hold such license under any of the said aforementioned previous Acts, shall, within his application for a license therefor, send to the Chairman of the Commissioners a plan in duplicate of such building or place prepared on a scale of 8 feet to the inch, and showing—

License of new warehouse.

- (a) the boundaries of such building or place ;
- (b) the position of the engines and furnaces used or proposed to be used in the warehouse ;
- (c) the space, if any, which has been reserved for the loading and unloading of carts thereat :

¹Formal words which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²These words were substituted for the words "is in existence at the commencement of this Act" by s. 2 of the Licensed Warehouse and Fire-Brigade Amendment Act, 1894 (Ben. Act 1 of 1894).

³Ben. Act II of 1872 was repealed by Ben. Act V of 1879, which again was repealed by Ben. Act IV of 1883, the last mentioned Act being repealed by s. 2 of the present Act.

(Chapter II.—Licensed Warehouses.—Secs. 7-10.)

and thereupon it shall be within the discretion of the Chairman of the Commissioners to grant a license from the Commissioners therefor as a warehouse under this Act, subject to the payment to the Commissioners of such annual fee as is hereinafter provided, or to refuse a license for the same :

Provided that when a license is refused, the reason for such refusal shall be recorded in writing.

Period for disposal of application for license.

7. Every application for a license under the last preceding section shall be disposed of within thirty days from the date of its being received by the Chairman of the Commissioners, and if not disposed of within that period, the applicant shall not be liable to any penalties under this Act for the use, after the expiration of the said period of thirty days, of the building or place as a warehouse in respect of which such application shall have been made, so long as such application is not finally refused by an order in writing under the hand of the Chairman of the Commissioners setting forth the grounds for such refusal.

Term and conditions of license.

8. Licenses under section 6 of this Act may be granted either permanently or for such term of years as the Chairman of the Commissioners shall think fit, and shall be subject to the following conditions, namely :—

(1) that the warehouse shall at all times be open to the inspection of an officer appointed by the Commissioner of Police. Such officer shall be a member of the Fire-Brigade, but shall not be a member of any Police Force :

(2) that the annual fee imposed in respect thereof be paid ¹[in advance].

Special Committee may exercise powers of Chairman.

9. (1) With the consent of the Chairman of the Commissioners, any Special Committee of the Commissioners, not less than three or more than five in number whom the Commissioners in meeting shall in that behalf appoint, may exercise all or any of the powers and discretion under this Act vested in the Chairman of the Commissioners.

(2) The proceedings of such Committee shall not be submitted to the Commissioners in meeting or be subject to revision by them.

Annual fee of license.

10. The annual fee payable in respect of any license shall not exceed ten *per centum per annum* on the annual value of the warehouse as it is assessed to the payment of the municipal taxes, less ten *per centum* on the outlay incurred in respect of the means and appliances, therein or appertaining thereto, for preventing or extinguishing fire :

¹These words were substituted for the words "as in that case made and provided," by s. 3 of the Licensed Warehouse and Fire-Brigade Amendment Act, 1894 (Ben. Act 1 of 1894).

of 1893.]

(Chapter II.—Licensed Warehouses.—Secs. 11-13.)

Provided that the annual fee payable by any owner or occupier in respect of any license shall not exceed ¹[one thousand five hundred rupees,] and that the estimated total annual amount to be derived from such fees shall not exceed fifty rupees *per centum* of the amount required to meet the cost of the fire-brigade, as shown in the budget mentioned in section 26 of this Act :

Provided also that the owner or occupier of adjacent warehouses and the godowns, yards or compounds auxiliary to such warehouses shall not be bound to take out more than one license in respect of such warehouses, godowns, yards and compounds.

11. Whenever and so often as a change in the occupation of any warehouse occurs, the person entering into occupation of the same shall, within two weeks of his so entering into occupation, give notice in writing to the Chairman of the Commissioners of such change of occupation, and shall thereupon pay to the Commissioners a fee of five rupees; and his name shall accordingly be substituted in the license in respect of such warehouse for the name of the last occupier.

Change in occupation of warehouse to be notified.

12. (1) Whenever the Chairman of the Commissioners receives credible information that any of the conditions, to which the license of any warehouse shall be subject, has been broken by the holder thereof, he may apply in writing, setting forth the substance of such information, to a Magistrate for the issue of a summons upon the holder of the license to show cause why such license should not be cancelled or suspended, and may also apply to such Magistrate to suspend in the meantime such license pending the hearing of the case.

Chairman may apply to Magistrate to suspend license of warehouse.

(2) The Magistrate shall not make an order suspending such license unless he is satisfied that it is necessary to prevent or obviate immediate danger or injury of a serious kind.

(3) The summons issued under this section shall be served upon the said holder of the license named therein in the manner provided in the Code of Criminal Procedure, ²[1898] for the service of summons.

Act V of 1898.

13. The Magistrate, before whom the case instituted under the last preceding section is brought on for disposal, may, if after taking evidence he be satisfied that there exist reasonable and proper grounds for cancelling or suspending the license, cancel such license, or may order the same, for such time as he may think fit, to be suspended, and may impose such conditions as to the reversal of such order of cancellation or suspension as may be consistent with the provisions of this Act for the grant of a license for a warehouse.

Magistrate may cancel or suspend license.

¹These words were substituted for the words "seven hundred and fifty rupees" by s. 2 of the Licensed Warehouse and Fire-Brigade (Amendment) Act, 1934 (Ben. Act I of 1934).

²This figure was substituted for the figure "1882" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

(Chapter III.—Penalties.—Secs. 14-20.)

CHAPTER III.

PENALTIES.

Penalty for
not taking
out license.

14. Any person who, without taking out a license, uses any building or place as a warehouse shall be liable, on conviction before a Magistrate, to a penalty not exceeding fifty rupees for each day during which he may so use or continue to use such warehouse.

Penalty for
using ware-
house after
refusal, etc.,
of license.

15. Any person who uses any warehouse in respect of which a license has been refused, or after the license in respect thereof shall have been cancelled, or during the time for which such license shall have been suspended, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, and to a further penalty not exceeding fifty rupees for every day during which any such warehouse may be so used as aforesaid.

Penalty for
breach of
conditions of
license.

16. Any holder of a license who breaks any of the conditions under which a license is held in respect of any warehouse shall be liable, on conviction before a Magistrate, to a penalty not exceeding fifty rupees for any one such offence.

Penalty for
neglecting
to notify
change in
occupation of
warehouse.

17. If, and so often as there be a change in the occupation of any warehouse, the person entering into occupation fail to give the notice and to pay the fee required by section 11 of this Act, such person shall be liable, on conviction before a Magistrate, to a penalty not exceeding ten rupees for each day during which he may so use or continue to use such warehouse.

Penalty for
giving false
information
to Chairman
respecting
license.

18. Any person who gives false information to the Chairman of the Commissioners with the object of inducing him to take action under section 12 of this Act shall, on conviction before a Magistrate, be liable to a penalty not exceeding fifty rupees.

Penalty for
preparing, etc.,
inflammable
substance on
roof of
building.

19. Any owner or occupier of a warehouse who shall prepare or dry, or cause to be prepared or dried, any inflammable substance or thing, for the time being subject to the operation of this Act, on the top or roof of any building constituting or forming part of such warehouse shall be liable, on conviction before a Magistrate, to a penalty not exceeding fifty rupees for any one such offence.

Penalty for
using as resi-
dence any
warehouse
used for pres-
sing jute or
cotton.

20. Any person who shall use as a residence any portion of a warehouse used for the pressing or screwing of jute or cotton, if jute or cotton be then stored therein, shall be liable, on conviction before a Magistrate, to a penalty not exceeding ten rupees for each day during which he may reside therein.

of 1893.]

(Chapter III.—Penalties.—Chapter IV.—Funds. —Secs. 21-25.)

21. Any person who shall bring into a warehouse, used for the pressing or screwing of jute or cotton, if jute or cotton be then stored therein or used therein, any matches or any artificial light unless duly and thoroughly protected, shall be liable, on conviction before a Magistrate, to a penalty not exceeding ten rupees for any one such offence.

Penalty for using matches or artificial light in warehouse.

22. Any person who shall smoke within a warehouse used for the pressing or screwing of jute or cotton, if jute or cotton be then stored therein, shall be liable, on conviction before a Magistrate, to a penalty not exceeding ten rupees for any one such offence.

Penalty for smoking within warehouse.

CHAPTER IV.

FUNDS.

23. The Commissioners shall pay to the Commissioner of Police half-yearly, in the months of May and November, such sums as are required to meet the cost of the fire-brigade as appear in the budget of the Commissioner of Police and in such proportion, respectively, as the ¹[Provincial Government] shall, from time to time, prescribe.

Commissioners to meet cost of fire-brigade.

24. The Commissioners shall rateably impose the annual fees payable for licenses under section 10 of this Act upon all warehouses, and shall appropriate towards the cost of the fire-brigade the amount derived from such annual fees,
² * * * and all rates levied under this Act.

Cost of fire-brigade how to be met.

25. (1) The Commissioners may, for the purpose of further providing the cost of the fire-brigade, levy the following rates :—

Rates may also be levied to provide for cost of fire-brigade.

- (a) a rate not exceeding two and-a-half *per centum* on the annual value, as it is assessed to the payment of municipal taxes, on any building or place used for the storage of any other inflammable substance or thing not specifically mentioned in clause (8) of section 3 of this Act, which the ¹[Provincial Government] may, by a notification to be published in the ³[*Official Gazette*] declare to be liable for the payment of such rate :

Provided that the rate payable by any owner or occupier in respect of any building or place under this clause shall not exceed one hundred rupees ;

- (b) a rate not exceeding one-half *per centum* on the annual value, as it is assessed to the payment of

¹See foot-note 4 on p. 71, *ante*.

²The words " and all penalties and fines imposed " were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 5 on p. 71, *ante*.

(Chapter IV.—Funds.—Secs. 26-28.)

municipal taxes, on all *bustee* lands with the huts, if any, upon them ;

- (c) a general rate not exceeding one-eighth *per centum* on the annual value of all houses and lands assessed under the provision of the Bengal Municipal Act, ¹[1932], and the ²[Calcutta Municipal Act, 1923].

Ben. Act
XV of
1932.
Ben. Act
III of
1923.

(2) Any building or place in respect of which a license has been granted under this Act as a warehouse, or which has been assessed under clause (a), and any *bustee* land assessed under clause (b), shall be exempt from further assessment under clause (c).

Commissioner
of Police to
prepare annually
budget or
estimate of
receipts and
expenditure of
fire-brigade.

26. (1) The Commissioner of Police shall prepare annually in or before the month of February a budget or estimate of the receipts and expenditure of the fire-brigade for the year commencing on the 1st of April next ensuing, and shall distinguish in the receipts of such budget the proportionate sums to be contributed by the several municipalities to which this Act extends or shall hereafter be extended ; and shall also show any balance of receipts remaining unexpended, after providing for any legitimate charge against the funds of the fire-brigade, and in like manner, if there be a deficit, shall show such deficit at the close of the previous year, and such credit or debit balances shall be taken into account by the ³[Provincial Government] in fixing the sum to be annually contributed by the municipalities concerned under this Act.

(2) Such budget shall be laid before the Commissioners at a meeting, and shall be forwarded by them to the ³[Provincial Government] with such remarks as they shall think fit to record ; and it shall be within the discretion of the ³[Provincial Government] to pass, modify or reject the estimates of all or any sums entered in such budget.

Sums to be
appropriated
as an asset of
Fire-Brigade
Fund.

27. Any sum standing at the credit of the Jute Warehouse Fund of the municipalities above-named ⁴* * * shall be appropriated as an asset of the Fire-Brigade Fund under this Act.

Mode of
recovery of
rates levied
under
section 25.

28. The provisions of the Bengal Municipal Act, ¹[1932], and the ²[Calcutta Municipal Act, 1923], relating to the recovery of rates levied under those Acts, respectively, shall, so far as they are consistent with this Act, apply to the recovery of rates levied under section 25 of this Act :

Ben. Act
XV of
1932.
Ben. Act
III of
1923.

¹This figure was substituted for the figure "1884" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²See foot-note 2 on p. 71, *ante*.

³See foot-note 4 on p. 71, *ante*.

⁴The words and figures " or at the credit of any fund appropriated to the maintenance of the fire-brigade under the provisions of Act IV of 1883 at the time when this Act comes into force," were repealed by the Amending Act, 1903 (I of 1903), and are omitted.

of 1893.]

(Chapter IV.—Funds.—Chapter V.—Fire-Brigade.—
Secs. 29-31.)

Provided that the rates levied under this Act in Calcutta shall be included ¹[with the consolidated rate mentioned in section 120 of the Calcutta Municipal Act, 1923].

29. The ²[Provincial Government] may fix the proportionate liability for the cost of the fire-brigade to be borne by the Commissioners of the municipalities to which this Act applies or may hereafter be extended, and may from time to time alter the proportions in which the Commissioners of any or all the municipalities, for the time being, subject to the operation of this Act, are liable for the payment of the said sum.

Provincial Government to fix proportionate liability for cost of fire-brigade to be borne by Commissioners.

CHAPTER V.

FIRE BRIGADE.

30. The Commissioner of Police shall maintain an efficient fire-brigade for the municipalities or such portions thereof that are for the time being subject to the operation of this Act.

Commissioner of Police to maintain fire-brigade for municipalities.

31. (1) The ²[Provincial Government] may from time to time make, and when made alter or repeal, such general or special orders, as it may think fit—

Power of Provincial Government to make orders with respect to fire-brigade.

for appointing or removing any member or officer of the force ;

for furnishing the fire-brigade with such fire-engines, fire-escapes, horses, accoutrements, equipments, tools and implements, as it may think proper ;

for building or providing stations, or hiring places for the keeping of the force, engines, horses and appurtenances ;

for giving gratuities to persons who have given notice of fires and to those who have rendered effective service to the brigade, on the occasion of fires ;

for the training, discipline, good conduct, salaries and pensions of the members of the force ;

for the speedy attendance of such members with engines and all necessary implements on the occasion of any alarm of fire ;

for sending the force, engines and appurtenances beyond the limits of the area to which this Act extends, in order to extinguish fire in the neighbourhood of the said limits ;

for imposing and summarily realizing a fine not exceeding one week's wages from any member of the brigade who may infringe these orders, and,

¹These words and figures were substituted for the words and figures " with the four rates mentioned in section 101 of the Calcutta Municipal Consolidation Act, 1888, as one consolidated rate" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²See foot-note 4 on p. 71, ante.

(Chapter V.—Fire-Brigade.—Secs. 32-35.)

generally, for the maintenance of the fire-brigade in a due state of efficiency.

(2) Such orders shall be published in the ¹[*Official Gazette*] and shall take effect from the date of such publication.

Commissioner of Police, etc., may exercise certain powers on occasion of a fire.

32. (1) On the occasion of a fire, the Commissioner or Deputy Commissioner of Police, or the Chief or other Officer in charge of the fire-brigade on the spot, may—

- (a) remove, or may order any member of the brigade to remove, any persons who by their presence interfere with the due operations of the brigade ;
- (b) by himself or by his men break into or through, or pull down, any premises for the purpose of putting an end to the fire, doing as little damage as possible
- (c) cause the mains and pipes of any district to be shut off, so as to give greater pressure of water in the place where the fire has occurred ;
- (d) call on the officer in charge of the Port Commissioners' fire-engine to render such assistance as may be possible, in the case of any fire occurring near the river bank, and,
- (e) generally take such measures as may appear necessary for the preservation of life and property.

(2) The Commissioner or Deputy Commissioner of Police, or the Chief Officer on the spot in charge of the brigade, may verbally nominate and depute one or more officers of the brigade to act at a distance ; and such officer or officers shall have for the time being the like powers as the Chief Officer himself possesses under this section.

Police-officers to aid fire-brigade in execution of its duties.

33. Police-officers of all grades shall be authorized to aid the fire-brigade in the execution of its duties. They may close any street in or near which a fire is burning, and they may, of their own motion or on the request of the Chief or other Officer of the fire-brigade, remove any persons who interfere by their presence with the operations of the fire-brigade.

Non-liability of police-officer, etc., to damages.

34. No officer of the police or of the fire-brigade shall be held liable to damages on account of any act done by him in the *bona fide* belief that such act was required in the proper execution of his duties.

Chief Officer of brigade to inquire into origin of fire and to make report to Magistrate.

35. (1) In the case of any fire occurring within the area to which this Act applies, the Chief Officer of the fire-brigade shall ascertain the facts as to the origin and cause of such fire, and shall make a report thereon to the Magistrate having jurisdiction in the place in which such fire shall have occurred ; and the said Magistrate, in any case where he may see fit, shall summon witnesses and take evidence in order to the further ascertainment of such facts.

¹See foot note 5 on p. 71, *ante*.

of 1893.]

(Chapter VI.—Fire-works, etc.—Chapter VII.—
Miscellaneous.—Secs. 36-40.)

(2) Copies of all reports and of all evidence recorded under this section shall be furnished on application to any Fire Assurance Company or other person interested, on payment of the fees payable for the copies of judicial proceedings.

CHAPTER VI.

FIRE-WORKS, ETC.

36. (1) Whoever within the area to which this Act applies, or to which it may hereafter be extended, shall let off rockets or send up fire-balloons without a license from the Commissioner of Police, and whoever shall sell fire-works without a license from the Commissioner of Police, for which a yearly fee not exceeding ten rupees shall be payable, shall be liable, on conviction before a Magistrate, to a penalty not exceeding fifty rupees for every such offence.

Penalty for letting off rockets, etc., and selling fire-works without license.

(2) All such fees received by the Commissioner of Police shall be applied by him towards the maintenance of the fire-brigade.

37. The Commissioner of Police may, at his discretion withdraw or suspend any license granted by him under the last preceding section :

Power of Commissioner of Police to withdraw or suspend license.

Provided that a license to sell fire-works shall not be withdrawn or suspended except after thirty days' notice.

38. The powers conferred on the Commissioner of Police in respect to Calcutta and the Suburbs by the two last preceding sections, shall be exercised in the municipality of Howrah by the Magistrate of the district, or the officer in charge of the current duties of the Magistrate's office.

Magistrate of Howrah to exercise certain powers of Commissioner of Police.

39. In the event of any rockets being let off or fire-balloons sent up, within the precincts of any private premises or compound without the express permission in writing of the Commissioner of Police or the Magistrate or officer as aforesaid, as the case may be, the owner or occupier, or person under whose immediate control the said premises or compound is, shall be liable to a fine not exceeding fifty rupees, unless he can prove that the offence was committed without his knowledge.

Penalty on householder for allowing rockets, etc., to be let off within premises without express permission.

CHAPTER VII.

Miscellaneous.

40. The [Provincial Government] may, on the recommendation of the Commissioners in meeting, declare that any building or place used for the storing, or pressing, or keeping

Provincial Government may declare other building or place to be a warehouse.

¹See foot-note 4 on p. 71, ante.

(Chapter VII.—Miscellaneous.—Secs 41-45.)

of any inflammable substance or thing other than those specified in clause (8) of section 3 of this Act shall be a warehouse within the meaning of, and be subject to the operation of this Act.

Report respecting licenses for warehouses, etc., to be submitted to Provincial Government.

41. (1) The Commissioners of the several municipalities to which this Act extends shall submit a report to the ¹[Provincial Government] once a year, at such time as the ¹[Provincial Government] shall direct, giving a statement of account of receipts and disbursements and showing how the provisions of this Act have been carried out, and specifying the warehouses in respect of which licenses have been granted.

(2) The Commissioner of Police shall make a similar report, showing the constitution, assets and the working of the fire-brigade during the year, the receipts and expenditure in respect thereof and the proceedings taken by him under sections 36 and 37 of this Act.

(3) Such reports shall be forthwith published in the ²[*Official Gazette*.]

Police-officer may arrest offenders under section 36 and convey them before Magistrate.

42. Any person committing any offence in respect of which a penalty is provided by section 36 of this Act may, if his name and address be unknown, be arrested by any officer of police and forthwith conveyed before a Magistrate having jurisdiction in the place in which such offence has been committed, or shall be taken to the nearest police-station within the said jurisdiction, in order that such person may be detained until he can be brought before a Magistrate, or until he shall enter into a recognizance with or without sureties for his appearance before a Magistrate.

Time within which offenders should be conveyed before Magistrate.

43. Whenever such person shall be taken to a police-station, the officer in charge of such station shall, as soon as possible, but in every case within twenty-four hours, cause him to be conveyed before a Magistrate having jurisdiction in the matter.

Form of license for warehouse.

44. Every license granted under Chapter II of this Act shall, as far as possible, be in the form of the schedule to this Act annexed.

Act not applicable to buildings where small quantities of jute, etc., are deposited.

45. (1) Nothing in this Act shall be deemed to apply to buildings or places wherein small quantities of jute, cotton, resin, varnish, pitch, tar, hay, straw, rags, tallow, wood or other inflammable substance or thing for the time being subject to the operation of this Act are deposited.

(2) The ¹[Provincial Government] may from time to time declare, by notification in the ²[*Official Gazette*], what quantities of jute, cotton, resin, varnish, pitch, tar, hay, straw, rags, tallow, wood or other inflammable substance or thing as aforesaid, shall be deemed to be small quantities within the meaning of the section.

¹See foot-note 4 on p. 71, *ante*.

²See foot-note 5 on p. 71, *ante*.

of 1893.]

(Chapter VII.—Miscellaneous.—Sec. 46.—Schedule.)

46. Sections 347 of the Calcutta Municipal Consolidation Act, 1888¹, and 261 of the Bengal Municipal Act, 1884², are hereby repealed, in so far as they entitle the Commissioners to levy fees in respect of premises licensed as depôts for hay, straw, wood, rags, jute or other dangerously inflammable material which are licensed and used as warehouses under this Act.

¹Ben. Act II of 1888.
²Ben. Act III of 1884.

Repeal of sections 347 of Bengal Act II of 1888 and 261 of Bengal Act III of 1884.

SCHEDULE.

(Referred to in Section 44.)

License under Bengal Act of 18

No. of 18

The Corporation of Calcutta (or the Municipal Commissioners, *as the case may be*) hereby grant unto this license under Bengal Act of , to store (or press and keep) jute (or cotton, resin or other inflammable substance or thing, *as the case may be*) in building or place, No. or Nos. , Calcutta (or No. or Nos. , Howrah, *as the case may be*), subject to the conditions noted on the back, and they hereby acknowledge to have received the sum of Rs. , being the license fee due by the said from to 189 in respect of thea foresaid premises, at the rate of Rs. *per annum*.

Name of owner

Name of occupier

Secretary to the Corporation
(*or to the Municipal Commissioners.*)

The day of

³(On the back of the license.)

¹Ben. Act II of 1888 was repealed and re-enacted by Ben. Act III of 1899 which again has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923), and this reference should now be construed as a reference to the corresponding section of the last-mentioned Act.—See the Bengal General Clauses Act, 1899 (Ben. Act I of 1899), s. 10.

²Ben. Act III of 1884 has been repealed and re-enacted by the Bengal Municipal Act, 1932 (Ben. Act XV of 1932), and this reference should now be construed as a reference to the corresponding provision of the latter Act.—See the Bengal General Clauses Act, 1899 (Ben. Act I of 1899), s. 10.

³These words were substituted for the words "On the back of schedule" by s. 6 of the Licensed Warehouse and Fire-Brigade Amendment Act, 1894 (Ben. Act I of 1894).

[Ben. Act I of 1893.]

(Schedule.)

CONDITIONS.

(1) The warehouse or warehouses in respect of which this license is granted shall at all times be open to the inspection of an officer appointed by the Commissioner of Police as provided by section 8 of the Licensed Warehouse and Fire-Brigade Act, 1893. Ben. Act I of 1893.

(2) The annual fee imposed in respect to this license shall be payable ¹[in advance.]

¹These words were substituted for the words "*(here state annual or other dates for payment of license fee)*" by s. 6 of the Licensed Warehouse and Fire-Brigade Amendment Act, 1894 (Ben. Act I of 1894).

Bengal Act III of 1894.

(The Calcutta Tramways Act, 1894).¹

(2nd May 1894.)

An Act to give effect to an agreement made between the Corporation of Calcutta and the Calcutta Tramways Company, Limited.

Whereas it is expedient to sanction and give effect to a memorandum of agreement made the second day of September, 1893, between the Corporation of Calcutta of the one part, and the Calcutta Tramways Company, Limited, of the other part, a copy whereof is set forth in the schedule to this Act; and whereas without the authority of the Legislature the said memorandum of agreement would be of no effect;

Preamble.

It is hereby enacted as follows:—

1. This Act may be called the Calcutta Tramways Act, Short title. 1894.

(Commencement). Rep. by the Amending Act, 1903 (1 of 1903).

2. The memorandum of agreement, a copy whereof is set forth in the schedule of this Act, is hereby authorized, sanctioned and declared valid and binding upon the Corporation of Calcutta and upon the Calcutta Tramways Company, Limited, and its assignees.

The agreement declared valid.

SCHEDULE.

(Referred to in section 2).

MEMORANDUM OF AGREEMENT made this second day of September, 1893, BETWEEN THE CORPORATION OF CALCUTTA incorporated under Act II of 1888² of the Lieutenant-Governor of Bengal in Council hereinafter called "the Corporation" of the one part and THE CALCUTTA TRAMWAYS COMPANY, LIMITED, a Company incorporated under the English Companies Acts having its Registered Office in England hereinafter called "the Company" of the other part WHEREAS the

¹LEGISLATIVE PAPERS—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1894, Pt. IV, p. 36; and for Proceedings in Council, see *ibid*, Supplement, pp. 242, 345 and 478.

LOCAL EXTENT.—Since this Act merely supplements the Calcutta Tramways Act, 1880 (Ben. Act I of 1880), it has the same local extent as that Act.

²Ben. Act II of 1888 was repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act III of 1899) which again has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

(Schedule.)

[Ben. Act III of 1894.]

Corporation are the successors of the Corporation of the Town of Calcutta the parties of the first part to the annexed articles of agreement dated the 2nd day of October, 1879, and the Company is the assignee of the rights and liabilities under the said articles of agreement of Dillwyn Parrish, Alfred Parrish, and Robinson Souttar the parties thereto of the other part AND WHEREAS under and by virtue of the 17th clause of the said articles of agreement the present rent payable by the Company to the Corporation is calculated at the rate of Rs. 3,250 *per annum* per mile of double line and Rs. 2,250 *per annum* per mile of single line AND WHEREAS the said articles of agreement do not contain any express provision prohibiting the Company after the opening of any tramway from discontinuing the working of such Tramway AND WHEREAS the parties hereto have deemed it expedient and have mutually agreed subject to the sanction and authorization of their said agreement by an Act of the Bengal Legislature that the said articles of agreement should be varied or modified to the extent and in the manner hereinafter appearing NOW THESE PRESENTS WITNESS that subject to these presents being sanctioned and authorized by an Act of the [Provincial Government] to be hereafter passed for the purpose and in consideration of the said mutual agreement and of the covenants hereinafter contained and on the part of the Corporation and of the Company respectively to be observed and performed the Corporation do hereby covenant with the Company and its assigns and the Company for itself and its assigns doth hereby covenant with the Corporation in manner following, that is to say:—

1. Subject as next hereinafter provided the rent payable by the Company to the Corporation from the 1st January, 1894, to the 31st December, 1900, being the end of the 21st year referred to in the said 17th clause of the said articles of agreement shall be calculated and paid at the present rate namely at the rate of Rs. 3,250 *per annum* per mile of double line and Rs. 2,250 *per annum* per mile of single line anything in the said articles of agreement to the contrary notwithstanding. Provided nevertheless that a remission of fifteen thousand rupees a year shall be granted for five years with effect from 1894 subject to the condition that the dividends declared by the Company do not exceed three and-a-half *per cent. per annum* during that period.

2. The Company shall not during the period from 1st January, 1894, to 31st December, 1900, without the previous sanction of the Corporation discontinue the working of any of its tramways which now or hereafter may be opened for traffic.

¹These words were substituted for the words "Lieutenant Governor of Bengal in Council" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act III of 1895.

(The Land Records Maintenance Act, 1895.)

CONTENTS.

PART I.

PRELIMINARY.

PREAMBLE.

SECTION.

1. (1) Short title.
(2) Extent.
Commencement.
2. Interpretation-clause.

PART II.

REGISTRATION OF MUTATIONS.

3. Registrars of Mutations.
4. Registers.
5. Landlords' statements.
6. Notice of transfer or succession to be given to Registrar of Mutations.
7. The contents of the notice.
8. Duty of Registrar on receipt of notice from transferor or transferee.
9. Duty of Registrar on receipt of notice from successor.
10. Appearance by agent.
11. Powers-of-attorney.
12. Law as to summonses and commissions.
13. Reason for refusal to register to be recorded.
14. Procedure on denial of transfer.
15. Procedure when transferor's name not in record-of-rights.
16. Appeal against refusal to register.
17. Registrar to give receipt for notice and, if required, copy of entries in register.
18. Registrar to allow inspection and to give certified copies of entries in register.
19. Fees to be fixed by the Provincial Government.
20. Fees under Tenancy Act.
21. Notice by non-occupancy or under-*raiyats*.
22. Registration of instruments effecting transfer of tenant-right and simultaneous registration of mutations.
23. Disability on failure to give notice.
24. Penalty for omission to give notice under section 6.
25. Penalty for omission to file statement under section 5.
26. Penalty for omitting to make entry or making incorrect entry in register with intent to injure.

SECTION.

27. Penalty for certain other offences.
- (a) Making false statements before Registrar of Mutations.
 - (b) False personation.
 - (c) Abetment of certain offences.
-

PART III.**RECOVERY OF EXPENSES OF A SURVEY AND PREPARATION OF A RECORD-OF-RIGHTS.**

28. Recovery of expenses of initial survey, etc.
29. Area, rate and date of recovery of expenses.
30. Payment of expenses by proprietors.
31. Payment of expenses by tenants and rent-free owners and occupiers.
32. Recovery from successors in interest.
-

PART IV.**MISCELLANEOUS.**

33. Registrars of Mutations to be public servants, and their records public records.
34. Appeals.
35. Provincial Government may vest officer with special appellate powers.
36. Power to make rules for selection, etc., of Sub-Registrars.

Bengal Act III of 1895.

(The Land Records Maintenance Act, 1895.)¹

(29th May 1895.)

An Act to provide for the maintenance of Records of tenant-rights in Bengal² and for the recovery of the cost of Cadastral Surveys and Settlements.

Whereas it is expedient to provide for the maintenance of records of tenant-rights and of settlement records in Bengal,² and for an alternative method of recovering the cost of cadastral surveys and settlements ;

It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be called “The Land Records Maintenance Act, 1895.” Short title.

(2) It shall come into force only in districts or parts of districts of which a field survey and record-of-rights have been made under Chapter X of the Bengal Tenancy Act, 1885 or under any other law for the time being in force, and to which the ³[Provincial Government] may, from time to time, extend it by an order published in the ⁴[*Official Gazette*] ; Extent.

and thereupon this Act shall commence and take effect in the districts or parts of districts named in such order on the day which shall be in such order provided for the commencement thereof. Commencement.

2. (1) In this Act all words and expressions defined in the Bengal Tenancy Act, 1885, shall have the meanings attributed to them, respectively, in that Act, Interpretation clause.

and the word “addition” shall have the meaning attributed to it in the Indian Registration Act, ⁵[1908].

¹ LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see, *Calcutta Gazette*, 1895, Pt. IV, p. 4 ; and for Proceedings in Council, see *ibid*, 1895, Supplement, pp. 142, 326, 494, 589, 659 and 720.

LOCAL EXTENT.—This Act extends only to districts or parts of districts notified under s. 1.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4 (2).

² This includes the present Province of Bengal and other territory.

³ These words were substituted for the words “Local Government” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴ These words were substituted for the words “*Calcutta Gazette*”, *ibid*.

⁵ This figure was substituted for the figure “1877” by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

(Part II.—Registration of Mutations.—Secs. 3-6.)

(2) By the term “record-of-rights” shall be understood the settlement record of tenant-rights called the *khatian*, or such new editions of such record as may be prepared under rules made under this Act, or such other corresponding record of tenant-rights as may be declared by the Board of Revenue to form the record-of-rights for any district or part of a district. A record-of-rights includes entries duly made in a Register of Mutations.

PART II.

REGISTRATION OF MUTATIONS.

**Registrars of
Mutations.**

3. The Sub-Registrars appointed under the Indian Registration Act, ¹[1908], shall be Registrars of Mutations ^{XVI of} 1903. under this Act.

Registrars.

4. The Registrar of Mutations shall keep such registers as shall, from time to time, be prescribed by the ²[Provincial Government] including, for every village within the limits of the sub-district, a Register of Mutations, in which there shall be recorded changes affecting the record-of-rights of that village, and containing such particulars as the Board of Revenue may, from time to time, with the sanction of the ²[Provincial Government] prescribe.

**Landlords’
statements.**

5. (1) Whenever the ²[Provincial Government] shall issue a notification in the ³[*Official Gazette*] to that effect, every landlord shall, within the period prescribed in the notification, file, in the office of the Registrar of Mutations, within the sub-district in which his tenants’ land is situated, a statement, in a form to be prescribed by the ²[Provincial Government] showing truly, to the best of his knowledge and belief, the changes, if any, which have taken place in his tenants’ rights, by reason of transfer or succession, since the record-of-rights was prepared, or since the last statement was filed.

(2) The Collector of the district shall cause such notification to be published by affixing a copy thereof in some conspicuous place in the office of such Collector, in every Civil Court, in every police-station, and in the office of every Subdivisional Officer within the district, and in any other manner which the ²[Provincial Government] may from time to time direct.

**Notice of transfer
or succession to
be given to
Registrar of
Mutations.**

6. Every tenure-holder, *raiyyat* at fixed rates and occupancy *raiyyat*, who transfers his tenure or holding, or any part thereof, and every person claiming to be in possession of any tenure or holding as a tenure-holder, *raiyyat* at fixed rates, or occupancy *raiyyat* in consequence

¹ See foot-note 5 on p. 89, *ante*.

² See foot-note 3 on p. 89, *ante*.

³ See foot-note 4 on p. 89, *ante*.

of 1895.]

(Part II.—Registration of Mutations.—Secs. 7, 8.)

of a transfer or of intestate or testamentary succession, shall, within four months from the date upon which he gave or took possession, as the case may be, give notice of the fact to the Registrar of Mutations within whose Sub-district the whole or some portion of the land to which the notice relates is situate, at his office :

Provided that a notice under this section is receivable although the prescribed period has elapsed :

Provided further that when any person has duly given notice under this section, all other persons are released from the obligation of giving notice in respect of the same transfer or succession :

Provided further that when an instrument effecting a transfer of tenant-right has been registered under the provisions of the Indian Registration Act, ¹[1908], all persons are released from the obligation of giving notice under this section in respect of the same transfer.

XVI of
1908.

7. The notice shall contain :—

The contents of
the notice.

- (a) in the case of a transfer, the names of the transferor and the transferee or, in the case of a succession, the name of the deceased and his successor,
- (b) a specification of the nature of the interest transferred, or acquired,
- (c) the survey number of the lands as entered in the record-of-rights, and
- (d) such further particulars as the ²[Provincial Government] may, from time to time, prescribe.

8. (1) The Registrar of Mutations shall, on receipt of a notice under section 6, whether given within the prescribed period or not, from a transferor or transferee, ascertain if both the transferor and the transferee, or in the case of the death of either party since the transfer, if the one party and the representative of the other party admit the transfer, or in the case of the death of both parties if their respective representatives, admit the transfer, and if both transferor or transferee or their respective representatives admit the transfer, he shall, after satisfying himself as to the identity of the persons appearing before him, cause the following particulars to be endorsed on the notice (that is to say) :—

Duty of Registrar
on receipt of
notice from
transfer or
transferee.

- (a) the signature and addition of every person admitting the transfer; and if such transfer has been admitted by the representative or agent of any person, the signature and addition of such representative or agent,

¹ See foot-note 5 on p. 89, *ante*.

² See foot-note 3 on p. 89, *ante*.

(Part II.—Registration of Mutations.—Secs. 9-11.)

(b) any payment of money or delivery of goods made in the presence of the Registrar of Mutations in reference to the transfer, and any admission of receipt of consideration, in whole or in part made in his presence in reference to such transfer,

and shall affix the date and his signature to these endorsements,

and shall register the transfer in the Register of Mutations in such manner as the ¹[Provincial Government] shall from time to time by rule prescribe.

(2) If necessary, the Registrar of Mutations may issue a summons for the attendance of either or both the transferor and transferee, or their respective representatives, either simultaneously or at different times, at his office ;

Provided that, in lieu of issuing a summons, he shall either himself go and examine, or issue a commission for the examination of any person who is :—

(a) exempt by law from personal appearance in Court,

(b) unable by reason of bodily infirmity, without risk or serious inconvenience, to attend at the office, or

(c) in jail under Civil or Criminal process.

**Duty of
Registrar on
receipt of
notice from
successor.**

9. The Registrar of Mutations on receipt of a notice under section 6, whether within the prescribed period or not, from a person claiming by succession, shall, after satisfying himself as to the identity of such person and causing the signature and addition of such person to be endorsed on the notice by a notice affixed in a conspicuous place, and by beat of drum, in the village in which the land claimed is situated, call upon any person who desires to do so to appear before him at his office within one month from the date of the last-mentioned notice, and deny the succession, and if within that period no one appears and denies the succession, he shall endorse a statement of the fact on the notice, affixing the date and his signature to the endorsements, and shall register the succession in the Register of Mutations in such manner as the ¹[Provincial Government] shall from time to time by rule prescribe.

**Appearance
by agent.**

10. Notwithstanding anything contained in sections 8, 9 and 12, any person may attend at the office of the Registrar of Mutations by agent duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

**Powers-of-
attorney.**

11. (1) For the purposes of the last preceding section, the powers-of-attorney here mentioned shall alone be recognized—

(a) if the principal at the time of executing the power-of-attorney resides in British India, a power-of-attorney executed before and authenticated by any

¹See foot-note 3 on p. 89, *ante*.

of 1895.]

(Part II.—Registration of Mutations—Secs. 12-14.)

XVI of
1908.

Magistrate or the Registrar or Sub-Registrar appointed under section 6 of the Indian Registration Act, ¹[1908], within whose district or sub-district the principal resides :

- (b) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the ²[Central Government]:

Provided that the following persons shall not be required to attend at any office or Court for the purpose of executing any such power-of-attorney as is mentioned in clause (a) of this section : -

persons exempt by law from personal appearance in Court;
persons who by reason of bodily infirmity are unable, without risk or serious inconvenience, so to attend;
and

persons who are in jail under Civil or Criminal process.

(2) In every such case the officer, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court. To obtain evidence as to the voluntary nature of the execution, the officer may go to the person purporting to be the principal and examine him or issue a commission for his examination. Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the officer hereinbefore mentioned in that behalf.

12. The law for the time being in force as to summonses, commissions and the compelling the attendance of persons summoned in suits before Civil Courts shall, *mutatis mutandis*, apply to any summons or commission issue, and any person summoned, under this Act.

Law as to
summonses
and commis-
sions.

13. Whenever a Registrar of Mutations, after receipt of a notice under section 6, does not register the transfer or succession in respect of which it is given, he shall make an entry of the fact and state his reasons in such manner as the ³[Provincial Government] may from time to time prescribe.

Reason for
refusal to
register to be
recorded.

14. If any of the persons purporting to have signed the notice, or any one mentioned therein as transferor or transferee or in the case of the death of either, if his representative denies the transfer,

Procedure on
denial of
transfer.

¹See foot-note 5 on p. 89, *ante*.

²These words were substituted for the words "Government of India" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 3 on p. 89, *ante*.

(Part II.—Registration of Mutations.—Secs. 15-18.)

or if any such person appears to be a minor, an idiot, or a lunatic, or

if any person, where the claim is by succession, appears before the Registrar on issue of a notice under section 9, and denies the succession,

the Registrar of Mutations shall refuse to register the mutation.

Procedure
when transferor's name
not in record-
of-rights.

15. If the name of a transferor, or of a deceased person through whom succession is claimed, inserted, in a notice given under section 6, is not recorded in the record-of-rights as that of the person in possession of the land specified in the notice, the Registrar of Mutations shall, without registering the transfer or succession, as the case may be, by a notice, affixed in a conspicuous place, and by beat of drum, in the village in which the land claimed is situated, call upon any person who desires to do so to appear before him at his office within one month from the date of the last-mentioned notice and deny that the alleged transferor, or deceased person through whom succession is claimed, was at the time of the alleged transfer in possession of the land specified in the notice.

And if no person within the prescribed period so appears and denies, the Registrar of Mutations shall, if the other provisions of the Act are complied with, record the transfer or succession, the subject of the notice, in the Register of Mutations.

Appeal
against re-
fusal to
register.

16. (1) When a Registrar of Mutations has made an order refusing to register a transfer or succession, an appeal shall lie within thirty days from the date of the order against such order to the Collector of the district to whom such Registrar of Mutations is subordinate; and the Collector may, after taking such evidence as he thinks necessary, reverse or alter such order; and if the Collector directs the transfer or succession to be registered, the Registrar of Mutations shall obey such order;

and such registration shall take effect as if the transfer or succession had been registered when the notice was first given under section 6.

(2) No appeal shall lie from any order of a Collector passed under this section.

Registrar to
give receipt
for notice and,
if required,
copy of
entries in
register.

17. The Registrar of Mutations shall give to the person giving a notice under section 6 a receipt therefor, and shall upon his application, grant to him, free of charge, a copy of the entries made in the Register of Mutations in pursuance of such notice.

Registrar to
allow inspection
and to give
certified copies
of entries in
register.

18. (1) On payment of the prescribed fees, the Register of Mutations shall be open to inspection by any person applying to inspect the same, and a copy of any entry therein shall be given to any person applying therefor.

(2) Copies given under this section shall be signed and sealed by the Registrar of Mutations and shall be admissible for the purpose of proving the contents of the original entry.

of 1885.]

(Part II.—Registration of Mutations.—Secs. 19-23.)

19. (1) The ¹[Provincial Government] shall from time to time prepare tables of fees payable—

Fees to be fixed by the Provincial Government.

(a) for the registration of mutations—

- (i) within the prescribed period,
- (ii) after the prescribed period,

(b) for copies of entries in the Register of Mutations,

(c) for inspecting the Register of Mutations,

(d) for notices, processes and commissions given or issued under this Act,

(e) for such other matters as appear to the ¹[Provincial Government], necessary to effect the purposes of this Act,

and may from time to time alter such tables.

(2) Tables of fees so payable shall be published in the ²[Official Gazette], and a copy thereof, in English and the Vernacular language of the district, shall be exposed to public view in the office of every Registrar of Mutations.

(3) All fees for the registration of mutations shall be payable at the time when the notice is given under section 6.

VIII of 1885.

20. The fees payable to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885, may be paid to the Registrar of Mutations, when notice is given under section 6, and such payment shall be held to be payment to the Collector and the Registrar of Mutations shall forthwith transmit all fees so paid to the Collector, and such notice to the Registrar of Mutations shall be held to be a notice to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885.

Fees under Tenancy Act.

21. Any non-occupancy *raiyat* or under-*raiyat*, if he thinks fit, may give any notice which a tenure-holder *raiyat* at fixed rates and occupancy *raiyat* is bound to give under section 6, and if he gives such notice, the provisions of this Act, as far as they are applicable, shall thereupon apply.

Notice by non-occupancy or under-*raiyats*.

XVI of 1908.

22. A Sub-Registrar, registering an instrument effecting a transfer of tenant-right, or, under the provisions of sections 64 and 65 of the Indian Registration Act, ³[1908], receiving a memorandum of a transfer of tenant-right, shall, as Registrar of Mutations, make an entry in the Register of Mutations as if he had received a notice under section 6.

Registration of instruments effecting transfer of tenant-right and simultaneous registration of mutations.

23. (1) No person bound to give notice under section 6 shall, after the period therein mentioned, be entitled to obtain a decree for, or recover, the rent of any land the subject of the transfer or succession until he has given such notice, and if the defendant denies that the notice has been given, or if the Court thinks fit, it may require him to file a certified copy of

Disability on failure to give notice.

¹See foot-note 3 on p. 89, *ante*.

²See foot-note 4 on p. 89, *ante*.

³See foot-note 5 on p. 89, *ante*.

(Part II.—Registration of Mutations.—Secs. 24-27.)

the entry in the Register of Mutations relative to such land, or to adduce evidence to the satisfaction of the Court that the notice was duly given.

(2) No tenant bound to give notice under section 6 shall, after the period therein mentioned, in any suit in which his landlord is plaintiff and he is a defendant, be entitled to adduce evidence that he is a tenure-holder, *raiyat* at fixed rates or *raiyat* with a right of occupancy in the land held by him until he has given such notice, but the Court in which any such suit is tried shall afford the defendant sufficient time to enable him to give such notice.

Penalty for omission to give notice under section 6.

24. Whoever voluntarily or negligently omits to give, within the prescribed time, notice under section 6, shall be liable to such fine, not exceeding fifty rupees, as the Collector of the district may see fit to impose.

Penalty for omission to file statement under section 5.

25. After a notification has been issued under section 5, whoever voluntarily or negligently omits to file, within the period therein specified, the required statement, shall be liable to such fine, not exceeding one hundred rupees, as the Collector of the district may see fit to impose :

Provided that no person shall be fined under this or the last preceding section who at any time prior to the institution of proceedings thereunder, or in the discretion of the Collector of the district at any time after such institution, has filed the statement required by section 5 or given the notice required by section 6.

Penalty for omitting to make entry or making incorrect entry in register with intent to injure.

26. Every Registrar of Mutations and every person employed in his office for the purpose of this Act, who being charged with the duty of making any entry in the Registrar of Mutations, voluntarily omits to make such entry, or makes any entry therein which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both. Act 1 XLV of 1860.

Penalty for certain other offences.

27. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both :—

Making false statements before Registrar of Mutations.

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any Registrar of Mutations in any proceeding or inquiry under this Act ;

False personation.

(b) falsely personates another, and in such assumed character presents any notice or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act ;

of 1895.]

(Part III.—*Recovery of Expenses of a Survey and Preparation of a Record-of-Rights.*—Secs. 28-31.)

Act XLV
of 1880.

(c) abets, within the meaning of the Indian Penal Code, anything made punishable under this or the last preceding section.

Abetment
of certain
offences.

PART III.

RECOVERY OF EXPENSES OF A SURVEY AND PREPARATION
OF A RECORD-OF-RIGHTS.

VIII of
1885.

28. It shall be lawful for ¹[Provincial Government], instead of proceeding under section 114 of the Bengal Tenancy Act, 1885, to recover from all or any of the proprietors, landlords, tenants and rent-free owners and occupiers in any district or part of a district, either in one year or several years, and in the manner specified in the sections following, their shares of all the expenses declared by the ¹[Provincial Government] to be recoverable from proprietors, landlords, tenants and rent-free owners and occupiers, which have been incurred in making a survey and record-of-rights and a settlement of rents under Chapter X of the Bengal Tenancy Act, 1885, such costs not having been incurred for the purposes of a settlement of land-revenue.

Recovery of
expenses of
initial survey,
etc.

29. The ¹[Provincial Government] may from time to time determine the total expenses which have been incurred in any district or part of a district in making a survey and record-of-rights, and the amounts (in such proportions as the ¹[Provincial Government] may from time to time determine) which shall be paid by the proprietors, landlords, tenants and rent-free owners and occupiers, respectively, in such district or part of a district, and the date from which the expenses aforesaid shall be recovered; and may specify the rate per acre to be paid by the said proprietors, landlords, tenants and rent-free owners and occupiers.

Area, rate
and date of
recovery of
expenses.

30. The amount due from proprietors shall be paid together with such instalment of land-revenue as the ¹[Provincial Government] may direct, and arrears shall be recoverable under the law for the time being in force for the recovery of public demands.

Payment of
expenses by
proprietors.

31. The amount due from tenants and rent-free owners and occupiers shall, subject to any orders passed by the ¹[Provincial Government] under section 28, to be paid by them to the Settlement Officer, on tender of such extract from the record-of-rights as they may be entitled to receive.

Payment of
expenses by
tenants and
rent-free
owners and
occupiers.

¹See foot-note 3 on p. 89, ante.

[**Ben. Act II**]

(*Part III.—Recovery of Expenses of a Survey and Preparation of a Record-of-Rights.—Part IV.—Miscellaneous.—Secs. 32-36.*)

Arrears shall be recoverable under the law for the time being in force for the recovery of public demands.

Recovery from successors in interest.

32. When any proprietor, landlord, tenant or rent-free owner or occupier liable to pay any portion of the expenses under an order passed under this Part since such expenses were incurred, has died or has transferred, in whole or in part, his interest in any land on account of which he may have become liable and such portion of the expenses remains unpaid, it shall be lawful for the Collector to recover the said expenses, or any portion thereof, from the person in possession of such interest or portion thereof.

Such expenses shall be recoverable under the law for the time being in force for the recovery of public demands.

PART IV.

MISCELLANEOUS.

Registrars of Mutations to be public servants, and their records public records.

33. Every Sub-Registrar appointed under this Act to be a Registrar of Mutations, and every person appointed temporarily to discharge the duties of any such office, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code and all official records and papers kept by any such officer under this Act shall be held to be public records and the property of ¹[the Crown].

Act XLV of 1860.

Appeals.

34. Every order of a Registrar of Mutations affecting any entry in the register of Mutations shall be appealable for a period of one month from the date thereof to the Collector of the district.

No appeal shall lie from any order of a Collector passed under this section.

Provincial Government may vest officer with special appellate powers.

35. The ²[Provincial Government] may from time to time vest any officer other than the Collector of the district with special appellate powers under this Act : and every officer so vested shall be competent to hear and decide any appeal which the Collector of the district is competent to hear and decide under this Act.

Power to make rules for selection, etc., of Sub-Registrars.

36. (1) The ²[Provincial Government] or the Board of Revenue with the sanction of the ²[Provincial Government]

¹These words were substituted for the word "Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 3 on p. 89, ante.

of 1895.]

(Part IV.—Miscellaneous.—Sec. 36.)

may, from time to time, make, repeal and alter rules, consistent with this Act—

- (a) regarding the appointment, control, discipline and payment of all Registrars of Mutations and their establishments ;
- (b) prescribing the manner of making entries of mutations in the record-of-rights, preparing new editions of such records, and re-publishing them from time to time, or otherwise making them available for public information ;
- (c) regarding the distribution of the expenses incurred under Part III, and
- (d) generally for the purpose of giving effect to the provisions of this Act.

VIII of
1885.

(2) The provisions of section 190 of the Bengal Tenancy Act, 1885, shall apply to rules made under clauses (b), (c) and (d).

Bengal Act I of 1896.

(The Protection of Muhammadan Pilgrims Act, 1896.)¹

(10th June 1896.)

An Act to provide for the protection of Muhammadan Pilgrims.

Whereas it is expedient to provide for the protection of Muhammadan Pilgrims :

It is hereby enacted as follows :—

Short title,
extent and
commencement.

1. (1) This Act may be called the Protection of Muhammadan Pilgrims Act, 1896 ;

(2) It extends in the first instance to Calcutta only ; but the ²[Central Government] may, by notification in the ³[*Official Gazette*] extend it to any other place in the Province of Bengal⁴; and

(3) It shall come into force—

(a) in Calcutta, from the date on which it may be published in the ³[*Official Gazette*] with the assent of the Governor General, and

(b) in any place to which it may be extended by notification under sub-section (2) of this section, from date specified in this behalf in such notification.

2. In this Act, unless there be something repugnant in the subject or context,—

Definitions.

(a) “ pilgrim ” means a Muhammadan who is proceeding to or returning from the *Hedjaz* ;

(b) “ pilgrim broker ” means a person who buys and re-sells, or sells on commission, or takes any reward for the purchase or sale of passage tickets, whether by sea or railway, for pilgrims ;

⁵[(bb) “ *Muallem* ”, means a person who offers for monetary consideration to act as a guide to pilgrims and includes any person employed by or acting for the furtherance of the business of, or under the direction of such guide :

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1896, Pt. IV, p. 3 ; for Report of Select Committee, see *ibid*, p. 5 ; and for Proceedings in Council, see *ibid*, 1896, Supplement, pp. 406, 464, 695 and 737.

LOCAL EXTENT.—This Act extends to Calcutta, and may be extended by notification to any other place in Bengal—see s. 1(2).

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900) s. 4(2).

²These words were substituted for the words “ Local Government ” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words “ *Calcutta Gazette* ” by paragraph 4(1), *ibid*.

⁴This now includes the present Province of Bengal and other territory.

⁵Clause (bb) was inserted by s. 2(1) of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

(Secs. 3-6.)

Provided that a *Muallem* who is an Arab subject shall be excluded from the restrictions imposed by or under this Act;]

(c) "agent" includes a person who has chartered a ship for the conveyance of pilgrims;

(d) "Calcutta" means the area for the time being included in "Calcutta" as defined in ¹[the Calcutta Municipal Act, 1923,] and includes the Port of Calcutta; and

Ben. Act
III of 1923.

(e) "Commissioner of Police" means—

(i) as regards Calcutta, the Commissioner of Police for that town, and

(ii) as regards any place to which this Act may hereafter be extended, any person whom ²[Central Government] may appoint, by name or by virtue of his office, to perform in such place the functions of the Commissioner of Police under this Act.

3. (1) The Commissioner of Police shall from time to time grant licenses empowering persons to act as pilgrim brokers ³[or *Muallems*.]

Grant of
licenses to
act as pilgrim
brokers or
Muallems.

(2) The ²[Central Government] may, from time to time, make rules to regulate the grant of such licenses and to prescribe the conditions to be embodied therein.

(3) All such rules shall be published in ⁴[*Official Gazette*.]

Licenses
what to
specify.

4. Every such license shall specify—

(a) the name and address of the licensee;

(b) the period for which the license is to be in force; and

(c) the conditions subject to which the license is granted.

5. Any person who, without a license granted under section 3, acts as a pilgrim broker ⁵[or *Muallem*], or who lends to another person a license granted to himself under that section, shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

Penalty for
acting as pil-
grim broker
or *Muallem*
without a
license, or for
lending
license.

Penalty for
misbehaviour
of licensed
pilgrim
broker or
licensed
Muallem.

6. If any licensed pilgrim broker ⁶[or licensed *Muallem*]—

(a) commits a breach of any of the conditions of his license; or

¹These words were substituted for the words "the Calcutta Municipal Consolidation Act, 1888" by s. 2(2), of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

²See foot-note 2 on p. 101, *ante*.

³These words were added by s. 3 of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

⁴See foot-note 3 on p. 101, *ante*.

⁵These words were inserted by s. 4, of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

⁶These words were inserted by s. 5(1), *ibid*.

of 1896.]

(Secs. 6A, 7.)

XXI of
1923.

- (b) purchases for or sells to any pilgrim a passage-ticket by any ship to which ¹[the Indian Merchant Shipping Act, 1923,] applies, at any time before notice has been given by the master, owner or agent of the ship under ²[Section 151] of that Act, of the time at which it is proposed that the ship shall sail; or
- (c) purchases for or sells to any pilgrim a passage-ticket by any ship unless the proposed time of sailing is printed on such ticket; or
- (d) charges any pilgrim a sum in excess of the cost price of any passage-ticket, or of any provisions or other articles, purchased for him, or receives from him any fee or commission on account of any such ticket; or
- 3* * * * *
- (f) purchase for any pilgrim a passage-ticket on which there is not printed or stamped the price charged for the passage according to the class of accommodation secured; or
- (g) by fraud or false representation, or by any false pretence whatever, induces any person to purchase a pilgrim's passage-ticket,

he shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

⁴6A If any licensed pilgrim broker receives from the master, owner or agent of any ship, or from any railway servant, any fee or commission in respect of the sale of any passage-ticket for a pilgrim, exceeding five *per centum* of the price of such ticket he shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

Penalty for receipt of commission exceeding five per cent. of the price of passage-tickets.

7. The Commissioner of Police may—

- (a) suspend the license of any pilgrim broker ⁵[or *Muallem*] pending any inquiry into any accusation against him of misconduct for which, if proved, he would be liable to fine under section 6, and
- ⁶(aa) suspend the license of any pilgrim broker pending any inquiry into any accusation against him of breach of the provisions of section 6A, and
- (b) cancel the license granted to any pilgrim broker ⁵[or *Muallem*] who is convicted of any offence under this Act or of any other criminal offence.

Power to suspend and cancel licenses.

¹These words were substituted for the words "the Native Passenger Ships Act, 1887" by s. 5(2) of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

²This word and figure were substituted for the word and figure "section 7" by s. 5 (2), *ibid*.

³Clause (e) was omitted by s. 5(3) of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

⁴Section 6A was inserted by s. 6, *ibid*.

⁵These words were inserted by s. 7(1), *ibid*.

⁶Clause (aa) was inserted by s. 7(2), *ibid*.

(Secs. 8-17.)

8 to 10. *Rep. by s. 24(2) of the Port Haj Committees Act, 1932 (XX of 1932).*

11. [Information to be supplied by master, owner or agent of ship conveying pilgrims.] *Rep. by s. 4 of the Indian Merchant Shipping (Amendment) Act, 1927 (XIV of 1927).*

12. [Penalty for refusal or omission to give such information or for giving false information.] *Rep. by s. 4 of the Indian Merchant Shipping (Amendment) Act, 1927 (XIV of 1927).*

13. [Penalty for issuing tickets in excess.] *Rep. by s. 10 of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).*

14. [Passage-tickets to be numbered consecutively and to have price marked.] *Rep. by s. 10 of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).*

Certain provisions of the Indian Merchant Shipping Act, 1923, to apply to offences and fines under this Act.

Certain penalties to be enforced only at the instance of the Commissioner of Police.

15. Sections 281, 282, 286 and 288 of the Indian Merchant Shipping Act, 1923, shall apply to all offences punishable and fines leviable under this Act. XXI of 1923.

16. The penalties to which masters, owners and agents of ships are made liable by this Act shall be enforced only on information laid at the instance of the Commissioner of Police.

17. [Construction of references to the Native Passenger Ships Act, 1887.] *Rep. by s. 10 of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).*

¹Section 15 was substituted for the original section 15 by s. 9 of the Protection of Muhammadan Pilgrims (Bengal Amendment) Act, 1929 (Ben. Act II of 1929).

Bengal Act V of 1897.

(The Estates Partition Act, 1897.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title, extent and commencement.
 2. Repeal and savings.
 3. Definitions.
-

CHAPTER II.

RIGHT TO CLAIM PARTITION.

4. Who entitled to claim partition.
 5. Partition according to interest.
 6. Separation of land held in common between the proprietors of two or more estates, when the estates are not under partition.
 7. Partition of lands under Act where a partition has been made by private arrangement.
 8. Tenants for life not entitled to claim partition.
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CHAPTER III.

SECURITY OF THE LAND-REVENUE.

9. Future partition not to relieve land from liability for total land-revenue, unless made as provided in this Act.
 10. Amount of land-revenue to be assessed on each separate estate.
 11. Restrictions on partition of estate with reference to land-revenue.
 12. Execution of decree for partition.
 13. Power to refuse partition which would result in formation of estates scattered so as to endanger the safety of the land-revenue.
 14. Interest alienated with special condition as to liability for land-revenue.
 15. Sale, for arrears of land-revenue, of an estate which is under partition.
 16. Sale, for arrears of land-revenue, of share in an estate which is under partition.
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CHAPTER IV.

INITIATION AND DISCONTINUANCE OF PARTITION PROCEEDINGS.

17. Application for partition how to be made.
18. Application to be signed and to contain certain particulars.
19. Application to be accompanied by copy of rent-roll and by specification of previous measurements and record-of-rights.

SECTION.

20. Procedure if application is not in order.
21. Notification and notice of application.
22. Power to reject application on receipt of objection.
23. Procedure when objection raises any question of right or title or of extent of interest.
24. Resumption of proceedings after postponement.
25. Suits instituted after four months not to affect or stay proceedings for partition.
26. Decree made while partition proceedings are in progress.
27. Decree made after partition proceedings completed.
28. Power of Civil Court to order partition on application being made to Collector.
29. Admission of application for partition, and procedure thereupon.
30. Subsequent application for separation of another share.
31. Power of Collector to refer application for partition to Deputy Collector.
32. Power of Collector to appoint Deputy Collector to carry out partition.
33. Power to strike partition case off the file, on petition of parties.
Recovery of costs.
34. Power of Commissioner to strike partition case off the file.
Recovery of costs.

CHAPTER V.**ESTABLISHMENTS AND COSTS.**

35. Power to appoint establishments and prescribe scale of remuneration.
36. Power to appoint special establishment.
37. Estimating and levy of cost of partition.
38. Apportionment of cost of partition.
39. Power of Deputy Collector to declare cost of local inquiry and by whom it is to be paid.
40. On completion of partition, total cost to be declared and account adjusted.
41. Power to direct that salary of Deputy Collector, and cost of special establishment, be recovered as part of costs of partitions.
42. Estates Partition Account.
43. Order by Civil Court for payment by parties of costs of partition.

CHAPTER VI.**PROCEEDINGS UP TO THE DETERMINATION OF THE PARTITION.**

44. Powers of Deputy Collector in making a partition.
45. Deputy Collector when to make survey and prepare record of existing rents and assets.
46. Particulars to be recorded.
47. Attestation of survey papers and record of existing rents and assets.
48. Publication of survey papers and record of existing rents and assets.
49. Power of Deputy Collector to accept previous survey, record-of-rights, measurements or rent-rolls, instead of making a new survey and a record of existing rents and assets.
50. Record of order, fixing of day for determining partition, and service of notices.

of 1897.]

SECTION.

CHAPTER VII.

PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

51. Power to allow partition to be made by proprietors themselves, or by arbitrators.
52. Procedure on reference to arbitration.
53. Arbitrators to deliver a partition paper.
54. Remuneration of arbitrators.
55. Approval of Collector and other authorities.
56. Assessment of land-revenue.

CHAPTER VIII.

MAKING OF PARTITIONS BY THE DEPUTY COLLECTOR, AND APPROVAL THEREOF BY THE COLLECTOR.

57. Procedure where no petition presented under section 51.
58. Submission of case to Collector ; his duties.
59. Duties of Deputy Collector when partition has been approved by Collector, or when Collector makes a new partition.
60. Proprietor not appearing on fixed day not entitled to make objection.
61. Submission of the papers to the Commissioner after approval of the partition by the Collector.

CHAPTER IX.

GENERAL PRINCIPLES FOR MAKING PARTITIONS.

Lands held in common tenancy.

62. Separate estates to be made compact.
63. Circumstances to be considered in making partitions.
64. Rights when dwelling-house belonging to one proprietor is situated on land to be allotted to another proprietor.
65. Power to apply section 64 to gardens, etc.
66. Rent for land fixed under section 64 or 65 deemed to be the assets of the land.
67. Redemption of rent fixed under section 64.
68. Amount payable in redemption of rent.
69. Such amount when payable.
70. Notice of payment to be given, and land to be held rent-free.
71. Collector to register the rent-free tenure.
72. Drawing of lots for equal shares.
73. Order and method of drawing lots when aggregate of two or more shares equal one other share, or equals the aggregate of two or more other shares.
74. Deputy Collector may require proprietors to attend or appoint agent for the purpose of drawing lots.
75. In default, Deputy Collector may appoint a person to draw lots.

Lands held in severalty.

76. Partition according to separate possession, and apportionment of land-revenue.
77. Lands of which each proprietor is in possession to be allotted to him.
78. Collector may cause transfer of lands agreed to by parties.

SECTION.*Lands held in common tenancy and Lands held in severalty.*

79. Places of worship, etc.
80. Tanks, wells, water-courses, reservoirs and embankments.
81. Splitting up of tenure or holding, and apportionment of rent thereof.
82. (*Repealed.*)
83. Land held at fixed rent on permanent intermediate tenure.
84. Land held in common between the proprietors of two or more estates how to be dealt with when one estate is under partition.
85. When proprietors of other estates may be required to pay a portion of the costs of making a division under section 84.
86. Allotment made under section 84 to be submitted to the Collector.
87. Land so allotted how to be dealt with.
88. Procedure when dispute or doubt exists as to whether any land forms part of a parent estate.
89. Procedure when partition completed in pursuance of order under section 88, clause (b), and proprietor of an estate dispossessed of any land by decree.

CHAPTER X.**PROCEDURE BEFORE THE COMMISSIONER UP TO THE COMPLETION OF A PARTITION.**

90. Procedure if proceedings require amendment or if appeal or objection presented.
91. Procedure in other cases.
92. Commissioner may return the papers for amendment or inquiry as often as he thinks fit.
93. Procedure by Collector on receipt of Commissioner's order confirming, or Board's order sanctioning, a partition.
94. Procedure as to giving possession of separate estates.
95. Each separate estate to be borne on the revenue-roll and General Register as separately liable for the land-revenue assessed upon it.
96. Boundary marks.

CHAPTER XI.**MISCELLANEOUS.**

97. Powers of Deputy Collector as to production of documents and attendance of witnesses.
98. General power to refer to arbitration.
99. Saving of tenures, leases and incumbrances.
100. Uniting of estates.
101. If separate estate falls into arrear, Collector to inquire into cause and report to Commissioner.
102. Power of Provincial Government to order a new allotment of the land-revenue.
103. Power to require proprietors of under-assessed estates to make refund to proprietors of over-assessed estates.
104. Publication of notifications.
105. Service of notices.
106. Mistakes and irregularities not to vitiate proceedings.
107. Fine in case of non-compliance with requisition.
108. Fees, etc., to be recoverable as public demands.
109. Powers and functions of Deputy Collector may be exercised by Collector.

of 1897.]

110. Power to vest Collector or Deputy Collector with settlement powers.
111. Appeals to the Collector, and admission by him of objections.
112. Appeals to the Commissioner, and admission by him of objections.
113. Appeals to the Board.
114. Limitation of appeals ; revision by Board ; further appeal to Board.
115. Stay of proceedings pending appeal or revision.
116. Revision of proceedings connected with giving possession.
117. Orders as to costs on appeal.
118. Powers of officers exercising jurisdiction under this Act with regard to false evidence or forgery.
119. Certain orders under this Act not liable to be contested or set aside by civil suit.
120. Board to be guided by order or instructions of Provincial Government.
121. Power of Board to make rules.

Bengal Act V of 1897.

(The Estates Partition Act, 1897.)¹

(8th December 1897.)

An Act to amend the law relating to the Partition of Estates.

Whereas it is expedient to amend the law relating to the partition of estates ;

55 & 56,
Vict., c. 14.
Act XIV
of 1882.

And whereas the sanction of the Governor General of India has been obtained, under section 5 of the Indian Councils Act, 1892, to the provisions contained in section 12 of this Act amending the Code of Civil Procedure² ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Estates Partition Act, 1897 ;

Short title,
extent and
commence-
ment.

(2) It extends to the territories ^{3*} * under the administration of the Lieutenant-Governor of Bengal⁴ ; and

(3) It shall come into force on the day⁵ on which it is first published in the *Calcutta Gazette* after having received the assent of the Governor General.

Ben. Act
VIII of
1876.

2. (1) On and from that day the Estates Partition Act, 1876, shall be repealed. But—

Repeal and
savings.

(a) this repeal shall not affect the previous operation of said Act, or anything duly done or suffered thereunder, or any fine incurred thereunder ;

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see Calcutta Gazette*, 1896, Part IV, p. 34 ; for Preliminary Report of Select Committee, *see ibid*, 1897, Pt. IV, p. 41 ; and for Proceedings in Council, *see ibid*, 1896, Supplement, pp. 695, 741, 2900 ; *ibid*, 1897, Supplement, pp. 137, 160, 1687, 3364 and 4023. The final Report of Select Committee was not published in the *Calcutta Gazette*.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal—*see s. 1* ; but its application is barred in the Chittagong Hill-Tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²Act XIV of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (Act V of 1908).

³The words “ for the time being ” were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴This includes the present province of Bengal and other territory.

⁵*i.e.*, the 8th December 1897.

(Chapter I.—Preliminary.—Sec. 3.)

- (b) where in any pending case an order under section 63 of the said Act was made before the said day, the subsequent proceedings shall, unless all the proprietors request otherwise, be carried on under the said Act, as if this Act had not been passed ;
- (c) subject to clause (b) of this section , all pending proceedings which have been commenced under the said Estates Partition Act, 1876, before the said day, shall be carried on under this Act, save that, where in any case the Collector has before that day directed that an application for partition be admitted, section 11 of the said Estates Partition Act, 1876, shall apply instead of clauses (a) and (b) of section 11 of this Act.

(2) Any enactment or document referring to the said Estates Partition Act, 1876. or to any enactment repealed thereby, shall, so far as may be, and subject to sub-section (1) of this section, be construed to refer to this Act or to the corresponding portion thereof.

3. In this Act, unless there be something repugnant in the subject or context,--- **Definitions.**

(i) " Board " means the Board of Revenue for ¹[the Province].

(ii) " Collector " means the Collector of the district on the revenue-roll of which an estate which is under partition, or which it is proposed to bring under partition is borne, and includes—

- (a) any officer whom the Board generally vests (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector has, with the sanction of the Commissioner, delegated (as he is hereby empowered to do) any of his functions in respect of the partition of an estate, and
- (b) any officer whom the Board specially vests (as it is hereby empowered to do) with the powers of a Collector for the purposes of any partition under this Act ;

(iii) " Commissioner " means the Commissioner of Revenue to whom the Collector engaged in making a partition is subordinate ;

¹These words were substituted for the words " the territories for the time being under the administration of the Lieutenant-Governor " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1897.]

(Chapter I.—Preliminary.—Sec. 3.)

(iv) “Deputy Collector” includes any Assistant Collector, Deputy Collector or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition under this Act, or to conduct any of the proceedings connected with such partition ;

(v) “proprietor” includes every person who is in possession of any estate under partition or any portion of such an estate, or of any interest in any such estate or in any part of such an estate, as owner thereof, whether or not such person is a recorded proprietor of the estate ;

(vi) “recorded proprietor” means a person whose name is registered on the Collector’s General Register of revenue-paying land as proprietor of an estate, or of any share or interest therein ;

(vii) the words “tenure,” “permanent tenure,” “holding” and “tenant” have the meanings attached to them in the Bengal Tenancy Act, 1885 ;

(viii) “applicant” means any person who has applied to the Collector under the provisions of this Act for the separation from a parent estate of land representing the interest of such person in such estate, and for the assignment to him of such land as a separate estate liable for a demand of land-revenue distinct from that for which the parent estate is liable ;

(ix) “estate” means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land-revenue ;

(x) “joint undivided estate” means an estate of which two or more persons are proprietors ;

(xi) “parent estate” means an estate for the partition of which proceedings are in progress under this Act, or of which the partition has been effected under this Act ;

(xii) “separate estate” means any distinct estate which is formed by the partition of a parent estate under this Act, or for the formation of which, by such partition, proceedings are in progress under this Act ;

(xiii) “land” does not include houses or other buildings standing thereon ;

(xiv) “rent” means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant ; and “rent payable in kind” means, in money, the amount which would be determined as the rent if a commutation were made under section 40, sub-section (4), of the Bengal Tenancy Act, 1885 .

[Ben. Act V

(Chapter II.—Right to claim Partition.—Sec. 4.)

(xv) “assets,” when used with reference to land, means—

(a) in the case of land held by cultivating *raiyats*—the rent payable by them ;(b) in the case of land which is occupied by a proprietor—the rent which might reasonably be expected to be payable by cultivating *raiyats* if the land were occupied by them ;

(c) in the case of land held on a permanent tenure which was created by all the proprietors of the estate and which by any law for the time being in force is protected against the purchaser at a sale for arrears of land-revenue—the rent payable by the holder of such tenure ;

(d) in the case of land held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be permanent tenure subject only to the payment of an amount of rent fixed in perpetuity, and

is of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors of the estate or any person deriving his title from such proprietors,—

the rent payable by the holder of such tenure whether he be known as *talukdar*, *patnidar*, or *mukadaridar* or by any other designation ;

(e) in the case of unoccupied land and land forming portion of a village site—such amount, if any, as the Deputy Collector may determine with reference to all the circumstances of the case, and includes—

(f) all profits derived out of land by proprietors from trees, rights of pasturage, forest-rights, fisheries and all other legal sources ;

(xvi) “assets,” when used with reference to an estate, means the assets of all land included in the estate ;

(xvii) “Chapter ” means a chapter of this Act ; and

(xviii) “section” means a section of this Act.

CHAPTER II.

RIGHT TO CLAIM PARTITION.

Who entitled
to claim
partition.

4. (1) Subject to the provisions of this Act, every recorded proprietor of a joint undivided estate who is in actual possession of the interest in respect of which he is so recorded shall be entitled to claim a partition of the said estate and the separation therefrom and assignment to him as a separate estate of land representing the interest of which he is in such possession

of 1897.]

(Chapter II.—Right to claim Partition.—Sec. 5.)

(2) Any two or more of such recorded proprietors may claim that land representing the interest of all such claimants be formed into one separate estate to be held by them as a joint undivided estate ; and every provision of this Act, which applies to an applicant for partition shall apply to any two or more persons making any such claim.

5. (1) If the interest of any recorded proprietor who is entitled to claim partition is an undivided share in an estate held in common tenancy, he shall be entitled to have assigned to him as his separate estate, land of which the assets shall bear the same proportion to the assets of the parent estate as his undivided share in the parent estate bears to the entire parent estate.

Partition according to interest.

(2) If the interest of such recorded proprietor is the proprietary right over specific *mauzas* or lands forming part of the parent estate and held by him in severalty, he shall be entitled to have assigned to him as his separate estate the said *mauzas* or lands.

(3) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in specific *mauzas* or tracts forming part of the parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate estate land, situated within such specific *mauzas* or tracts of which the assets shall bear the same proportion to the assets of such specific *mauzas* or tracts as his undivided share in such specific *mauzas* or tracts bears to the entire *mauzas* or tracts :

Provided that, if the interest of such recorded proprietor consist of such an undivided share in more than one *mauza* or tract, he shall not be entitled to have land assigned to him in every such *mauza* or tract, but the Collector may assign to him as his separate estate land situated in any one or more of the said *mauzas* or tracts, subject to the condition that the assets of such land are in proportion to the aggregate of the interests which he holds in all such *mauzas* or tracts.

(4) If the interest of such recorded proprietor consists partly of land held in severalty, and partly of an undivided share either in the whole estate or in specific land held in common tenancy, he shall be entitled to have the portion of the common land falling by partition to his share added to the land held by him in severalty, and the estate thus formed shall be assigned to him as his separate estate, so that the assets shall bear the same proportion to the assets of the whole estate as his interest in all the land and undivided shares held by him bears to the aggregate interests of all the proprietors.

(5) If the interest of such recorded proprietor is of more than one of the kinds specified in the preceding sub-sections, land shall be assigned to him as far as possible in accordance with the principles therein laid down.

(Chapter II.—Right to claim Partition.—Chapter III.—Security of the Land-revenue.—Secs. 6-10.)

Separation of land held in common between the proprietors of two or more estates, when the estates are not under partition.

6. Whenever any land is held in common between the proprietors of two or more estates not being under partition, any one or more of such proprietors may, without applying for partition of their several estates *inter se*, apply for separation of the land held by them in common, and for the allotment of the proper shares of such land to each of their separate estates, the land-revenue of those estates remaining unaltered; and such application shall be dealt with as far as may be in accordance with the provisions of this Act.

Partition of lands under Act where a partition has been made by private arrangement.

7. (1) Where the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor has, in pursuance of such arrangement, taken possession of separate lands to be held in severalty as representing his interest in the estate, no partition of the estate shall be made under this Act except—

- (a) on the joint application of all the proprietors, or
- (b) in pursuance of a decree or order of a Civil Court.

(2) No objection to the partition of an estate under this Act on the ground that the lands have been divided by private arrangement shall be admitted unless it is presented before the Collector records a proceeding under section 29 declaring the estate to be under partition.

Tenants for life not entitled to claim partition.

8. Notwithstanding anything hereinbefore contained, no person having a proprietary interest in an estate for the term of his life only shall be entitled to claim partition under this Act.

CHAPTER III.

SECURITY OF THE LAND-REVENUE.

Future partitions not to relieve land from liability for total, land-revenue, unless made as provided in this Act.

9. No partition of an estate made after the commencement of this Act shall relieve any land from liability to the Government for the total demand of land-revenue assessed upon the estate of which the land forms part, unless the partition is made as herein provided.

Amount of land-revenue to be assessed on each separate estate.

10. Except as otherwise provided in this Act, the amount of land-revenue assessed on each separate estate shall bear the same proportion to the whole amount of land-revenue for which the parent estate was liable as the assets of such separate estate bear to the whole assets of the parent estate.

of 1897.]

(Chapter III.—Security of the Land-revenue.—Secs. 11-13.)

11. Subject to clauses (b) and (c) of section 2 of this Act, no partition of an estate shall be made, and no application for the partition of an estate shall be admitted,—

Restrictions on partition of estate with reference to land-revenue.

- (a) if the annual amount of land-revenue for which the separate estate of the applicant would, after partition, be liable would not exceed ten rupees ; or
- (b) if, after separation of the applicant's interest, the annual amount of land-revenue for which the separate estate of the remaining proprietor or proprietors would be liable would not exceed five rupees ; or
- (c) if the Collector considers that for any reason any of the separate estates would be likely to prove an insufficient security for the payment of the land-revenue which would be separately charged upon it.

12. (1) Any Civil Court which has made a decree for the partition or for the separate possession of a share of an undivided estate paying land-revenue to the Government may, notwithstanding anything in ¹[section 54 of the Code of Civil Procedure, 1908], cause the decree to be executed in the manner prescribed in ²[rules 13 and 14 in Order XXVI in Schedule I to] that Code ; and if it does so the joint and several liability of the entire estate for the the whole of the land-revenue chargeable upon it shall not be prejudiced or affected.

Execution of decree for partition.

Act V of 1908.

(2) If any decree is sent to the Collector for execution under ³[section 54] of the said Code, the execution thereof shall be subject to the restrictions imposed by section 11 of this Act.

13. The Collector may refuse to admit an application for the formation of land held in severalty into a separate estate, or to proceed with a partition undertaken on such an application, or to admit or proceed with any other application for partition, if, in consequence of the land being intermingled with that held by other proprietors, the result of the partition would be to form out of a compact estate one or more estates consisting of scattered parcels of land in such a way as, in the opinion of the Collector, to endanger the safety of the land-revenue :

Power to refuse partition which would result in formation of estates scattered so as to endanger the safety of the land-revenue.

Provided as follows :—

(a) a partition may be allowed in any such case if the recorded proprietors agree to such a distribution of land as would make the estates formed by the partition reasonably compact ;

¹These words and figures were substituted for the words and figures "section 265 of the Code of Civil Procedure" by the Bengal Repealing and Amending Act, 1938 (Bon. Act I of 1939).

²These words and figure were substituted for the words and figure "section 396 of," *ibid.*

³This word and figure were substituted for the word and figure "section 265," *ibid.*

(Chapter III.—Security of the Land-revenue.—Secs. 14-16.)

(b) nothing in this section shall be deemed to prohibit the partition into separate estates of any parent estate which before such partition is not compact and consist only of scattered parcels of land.

Interest alienated with special condition as to liability for land-

14. No proprietor who has alienated any portion of his interest in an estate, or in any specific land of an estate, by private contract, with the condition that the transferee shall be liable in respect of the interest acquired by him to pay a specified amount or a specified share of the land-revenue for which the estate is liable (such amount or share being other than the proportionate amount or the proportionate share for which such transferred interest if formed into a separate estate would be liable under section 10),

and no proprietor who has derived his title from any proprietor who has made any alienation as aforesaid,

shall be entitled to claim a separation under this Act of the interest which he continues to hold in the estate ;

and no such transferee as aforesaid, and no person deriving his title from such a transferee, shall be entitled to claim a separation of the interest which has been so acquired :

Provided that a separation of such interests may be made if the parties concerned agree—

(a) to waive the conditions of the contract as regards the proportion of land-revenue for which the transferor and transferee or their representatives respectively are liable, and

(b) to hold the estates which may be allotted to them respectively by the partition subject to the payment of such amount of land-revenue as may be assessed upon them respectively under this Act.

Sale, for arrears of land-revenue, of an estate which is under partition.

15. If any estate has been declared to be under partition as provided in section 29, any arrears of land revenue accruing due thereon before the date specified in the notice issued under section 94 may be realized by sale of the estate as if the same had not been declared to be under partition; and, if such sale takes place, the partition proceedings shall cease from the date thereof, but shall be revived if the sale is set aside.

Sale, for arrears of land-revenue, of share in an estate which is under partition.

16. Nothing contained in section 15 shall be deemed to affect the provisions of section 10, section 11, section 12, section 13 or section 14 of ¹the Bengal Land-revenue Sales Act, 1859,] or any similar law for the time being in force, in respect to the opening of separate accounts for different shares in an estate and the protection afforded to such shares thereby :

Provided that, if any share in any estate is sold for its own arrears of land-revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be

¹These words and figure were substituted for certain words by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

of 1897.]

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Secs. 17, 18.)

sold subject to the partition proceedings, which shall proceed as if no such sale had taken place ; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

CHAPTER IV.

INITIATION AND DISCONTINUANCE OF PARTITION PROCEEDINGS.

17. Every application for partition shall be made in writing to the Collector of the district on the revenue-roll of which the estate is borne, and shall be presented by the applicant or by his duly authorized agent.

Application for partition how to be made.

18. Every such application shall be signed by the applicant or by his duly authorized agent, and shall contain the following particulars, so far as they are known to or can be ascertained by him, namely :—

Application to be signed and to contain certain particulars.

- (a) the name of the parent estate ;
- (b) the number under which such estate is borne on the revenue-roll, and the land-revenue demand for which it is liable ;
- (c) the number under which such estate is borne on the Collector's General Register of the revenue-paying lands ;
- (d) the name and address of every proprietor, whether recorded or unrecorded, of such estate, the name and address of every proprietor of any other estate holding land in common with the proprietors of the parent estate, and the name of the post office of the area within which each of the said proprietors resides ;
- (e) the character and extent of the interest of which each proprietor of the parent estate is in possession ;
- (f) a specification of any land held by proprietors of the parent estate in common with proprietors of other estates and of the rights of such proprietors respectively in such land, and
- (g) such further particulars, if any, as may be prescribed by rules made by the Board.

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Secs. 19-21.)

Application to be accompanied by copy of rent-roll and by specification of previous measurements and record-of-rights.

19. (1) Every such application shall, subject to the provisions of sub-section (4) of this section, be accompanied by a copy of the rent-roll of the estate, and by a specification referring to the papers of every measurement and record-of-rights which has respectively been made of and prepared for the estate, by any officer appointed in that behalf¹ [by the Provincial (Government)] or other competent authority and of which the person verifying the application under sub-section (2) has knowledge.

(2) The said application, rent-roll and specification shall be verified at the foot of the application, by the applicant, or by his duly authorized agent having personal knowledge of the facts stated therein in the manner following, or to the like effect : —

“ I, A. B., declare that the particulars contained in this application and in the rent-roll and specification accompanying it are correct to the best of my knowledge and belief.”

(3) If the said application, rent-roll or specification contains any entry which the person making the verification knows or believes to be false, or does not believe to be true, such person shall be liable to be punished in the same manner as if he gave false evidence.

(4) If the person presenting the application is unable to produce a rent-roll as required by sub-section (1) of this section, he shall state the reason of such inability, and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll ; and the Collector may, if he thinks fit, require such person to produce such rent-roll.

20. If any such application does not in the opinion of the Collector fulfil the requirements of the foregoing sections of this chapter, he may either reject it or return it for amendment.

21. If in the opinion of the Collector the application fulfils the said requirements, and if there appears to him to be no objection to making the partition he shall—

(a) publish a notification of the application in the manner prescribed by section 104, and also by causing copies to be posted up at the Court of the Judge of the district and at the Court of every *Munsif* and Subdivisional Officer within whose jurisdiction, and at every police-station within the jurisdiction of which, any land appertaining to the estate is known to be situated ;

(b) by such notification invite any person claiming any proprietary right in the estate, who may object to

Procedure if application is not in order.

Notification and notice of application.

¹These words were substituted for the words “ by the Government ” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1897.]

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Secs. 22-24.)

the partition, to state his objection, either in person or by duly authorized agent, on or before a day to be specified in the notification, not being less than thirty or more than sixty days from the date of the publication of the notification on the estate ; and

- (c) serve a notice of the application on such of the recorded proprietors of the estate as have not joined in the application, on any unrecorded proprietor who has been named in the application, and on every proprietor of any other estate who holds land in common with the proprietors of the estate to which the application relates.

22. If any person claiming a proprietary right as aforesaid states an objection to the partition on or before the day specified in the notification published under section 21, or at any subsequent time if it shall then seem fit to the Collector to admit such objection, and the Collector, on consideration of the objection, is of opinion that there is good and sufficient reason for rejecting the application, he may reject the same, and if he does so shall record the grounds of such rejection.

Power to reject application on receipt of objection.

23. If any such objection raises any question of right or title or of extent of interest as between any applicant and any other person claiming to be a proprietor of the parent estate, and if it appears to the Collector that such question has not been already determined by a Court of competent jurisdiction, the Collector may hold such inquiry into the objection as he may deem necessary, and, if he be satisfied that the applicant is in possession of the extent of the interest for the separation of which he has applied, may instead of rejecting the application as provided in section 22,

Procedure when objection raises any question of right or title or of extent of interest.

- (a) direct that the partition proceedings shall proceed for the purpose of forming and assigning to the applicant a separate estate in accordance with the extent of interest claimed by him in the parent estate ; or
- (b) direct that such proceedings be postponed for four months.

24. At the expiration of the said four months the Collector shall resume the proceedings, unless the person who has made the objection, or some other person,—

Resumption of proceedings after postponement.

- (a) has obtained an order from a Civil Court directing that such proceedings be stayed, or
- (b) shows that a suit has been instituted before a Civil Court to try some question of such a nature as to lead the Collector to think the proceedings ought to be stayed until the question has been finally decided or until the proceedings in such Court in respect thereof shall have terminated.

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Secs. 25, 26.)

**Suits
instituted
after four
months not
to affect or stay
proceedings
for partition.**

25. No suit instituted in a Civil Court, after the lapse of four months after the Collector has—

- (a) made a direction under clause (a) or clause (b) of section 23, or
- (b) recorded a proceeding under section 29,

by any person claiming any right or title in or to a parent estate, shall avail to affect or stay the progress of any proceedings which may have been taken under this Act for the partition of the estate.

**Decree
made while
partition
proceedings
are in
progress.**

26. (1) Every decree affecting a parent estate made by a Civil Court after the estate has been declared under section 29 to be under partition, but before the date specified in the notice served under section 94—

- (a) shall be made in recognition of the proceedings in progress under this Act for the partition of the estate, and
- (b) shall be framed in such manner that the decree may be applied to, and carried out in reference to, the separate estates which the Collector in his proceeding recorded under section 29 has ordered to be formed out of the parent estate.

(2) If the effect of any such decree be to declare any person or body of persons to be entitled to any extent of interest in the parent estate in excess of the extent of interest which the Collector in the said proceedings has declared to be held by such person or body of persons, the decree shall specify, separately in respect of every proprietor or body of proprietors of whose interests the Collector has separately specified the extent in the said proceedings, the proportion of such excess which such person or body of persons is entitled to recover from every such proprietor or body of proprietors ;

and every person or body of persons so entitled to recover any extent of interest from any such proprietor or body of proprietors shall, for the purposes of the partition proceedings be deemed to have the same rights, and to be subject to the same liabilities, as a person who has acquired such extent of interest from a proprietor or body of proprietors by private purchase after an estate has been brought under partition under section 29 and on the date on which the decree was passed ;

and such person or body of persons may apply, as in this Act provided, for the separation and assignment to him or them of the lands representing the extent of interest so acquired ;

and, notwithstanding anything contained in section 11, such application shall be dealt with as provided in section 30;

of 1897.]

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Secs. 27, 28.)

and the lands thereupon assigned to the said person or body of persons shall be amalgamated with his or their separate estate.

27. (1) Every decree affecting a parent estate made by a Civil Court after the date specified in the notice served under section 94, in a suit which was instituted as mentioned in section 25,—

Decree made after partition proceedings completed

(a) shall be made in recognition of the partition proceedings, and

(b) shall be framed so as to give effect to the division of the parent estate into separate estates which has been ordered by the Collector, and so as not to disturb such division.

(2) If the effect of any such decree be to declare any person or body of persons to have been entitled to any extent of interest in the parent estate in excess of the extent of interest which is represented by the separate estate assigned to such person or body of persons by the Collector in the partition proceedings the decree shall specify, separately in respect of the proprietor or joint proprietors of every separate estate formed by the partition, the proportion of such excess of interest which such person or body of persons is entitled to recover from such proprietor or joint proprietors ;

and every person or body of persons so entitled to recover any extent of interest from the proprietor or joint proprietors of a separate estate shall be entitled to recover such extent of interest out of the separate estate which has been assigned to such proprietor or joint proprietors, and out of such separate estate only ;

and the decree shall be executed by placing the person or persons so entitled in the position of a recorded joint proprietor or recorded joint proprietors of such separate estate, holding the same as a joint undivided estate in common tenancy with the proprietor or joint proprietors to whom such separate estate was assigned by the Collector in the partition proceedings, the extent of the interest of the joint proprietors respectively in such estate being such as is declared in the decree.

28. (1) A Civil Court may at any time direct the Collector, upon an application being made to him in accordance with sections 17, 18 and 19,—

Power of Civil Court to order partition on application being made to Collector.

(a) to assign to any person land representing a specified interest in any estate, or in any specified village or tract of land in an estate, to be held by such person as a separate estate ; or

(b) to divide off from any estate any specified land or villages, and to assign it or them to any person to be held as a separate estate :

[Ben. Act V

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Sec. 29.)

Provided that no Civil Court shall in any such case—

- (i) specify the amount of land-revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable, or
- (ii) direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.

(2) The Collector shall assess the land-revenue on every such separate estate in accordance with the provisions of this Act.

Admission of application for partition, and procedure thereupon.

29. If no objection be made, within the time specified in the notification published under section 21, to an application for partition, or when all objections have been disposed of, and if the Collector has no reason to believe that any obstacle exists to his making the partition as applied for,

he shall direct that the application be admitted, and shall record a proceeding—

- (a) declaring the estate to be under partition for the purpose of forming and assigning to the applicant a separate estate :
- (b) declaring the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants ; or, if more than one separate application for separation has been admitted, the extent of interest in the parent estate which he finds to be held by every separate applicant or body of joint applicants, respectively :
- (c) declaring the extent of interest which remains to any recorded proprietor or body of recorded proprietors who are not applicants ;
- (d) ordering that land proportionate to the interest so declared to be held by each applicant, or body of joint applicants respectively, shall be formed into a separate estate, to be assigned to such applicant or body of joint applicants ; and
- (e) ordering that land proportionate to the interest so declared to remain to any recorded proprietor or body of recorded proprietors who are not applicants shall be left forming a separate estate ;

and shall at the same time issue a notice to each of the proprietors by registered post letter informing him that the application for partition has been admitted and that the partition will be proceeded with, and requiring him to register his name and address and to appoint an agent to accept service of process and to make any appearance or application or do any act required or authorized to be made or done by a party to a partition under this Act.

of 1897.]

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Secs. 30-33.)

30. (1) At any time after the Collector has recorded a proceeding under section 29, and before the Deputy Collector has partitioned the land into separate estates under section 57, any recorded proprietor in the estate, other than the original applicant, may apply for the separation of his share.

Subsequent application for separation of another share.

(2) The Collector may reject or admit any such application; and if he admits it may order either that proceedings for affecting such separation shall be carried on simultaneously with the previous proceedings, or that compliance with the application be postponed until such previous proceedings have been completed, and the shares separated in accordance therewith.

(3) When the consideration of any application which has been postponed under sub-section (2) is resumed, the papers of the previous proceedings aforesaid may be used so far as they are applicable.

31. The Collector may refer any application for partition to any Deputy Collector for the purpose of making inquiries and doing any other thing authorized or required by this chapter:

Power of Collector to refer application for partition to Deputy Collector.

Provided that every order—

- (a) rejecting an application under section 22,
- (b) directing, under section 23, that partition proceedings shall proceed or shall be postponed,
- (c) directing, under section 29, that an application for partition be admitted,
- (d) made under section 30, or
- (e) appointing a Deputy Collector under section 32,

and every proceeding recorded under section 29, shall be made and recorded, respectively, by the Collector and not by any Deputy Collector.

32. As soon as the Collector has declared an estate to be under partition as provided in section 29, he may appoint a Deputy Collector to carry out the partition and all or any of the proceedings necessary thereto.

Power of Collector to appoint Deputy Collector to carry out partition.

33. (1) If, at any time after an order has been passed for making a partition of a parent estate, all the recorded proprietors of the estate present a petition to the effect that they do not wish the partition to proceed, the Collector may, after such inquiry as he considers necessary, strike the partition case off the file, and at the same time require the proprietors to pay all costs incurred in and about the partition.

Power to strike partition case off the file, on petition of parties. Recovery of costs.

(2) Any such costs which have not already been levied as provided in section 37 shall be levied in proportion to the shares of the respective proprietors.

[Ben. Act V]

(Chapter IV.—Initiation and Discontinuance of Partition Proceedings.—Chapter V.—Establishments and Costs.—Secs. 34-38.)

Power of Commissioner to strike partition case off the file. Recovery of costs.

34. (1) If, at any time after an order has been passed for making a partition, it appears to the Commissioner that any sufficient reason exists why the partition should not be proceeded with,

he may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition case should not be struck off the file, and after considering any objections which may be made, order the partition case to be struck off the file.

(2) All costs which have not already been levied as provided in section 37 shall thereupon be levied in proportion to the shares of the respective proprietors.

CHAPTER V.

ESTABLISHMENTS AND COSTS.

Power to appoint establishments and prescribe scale of remuneration.

35. The Deputy Collector, with the approval of the Collector, and subject to any rules made in that behalf by the Board, may appoint such persons as may be needed for the purposes of any proceedings under this Act and prescribe the scale of their remuneration.

Power to appoint special establishment.

36. In any district or division in which partitions are so numerous or extensive as to render necessary the appointment of a special establishment in the office of the Collector or of the Commissioner, the Collector or the Commissioner, as the case may be, with the previous sanction of the Board, may appoint such establishment.

Estimating and levy of cost of partition.

37. (1) As soon as possible after an estate has been declared to be under partition as provided in section 29, the Collector shall estimate the cost of making the partition; and the amount shall be levied from the proprietors in such instalments and at such times as may be fixed by rules made by the Board.

(2) If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as provided in subsection (1).

Apportionment of cost of partition.

38. The cost of making a partition shall be apportioned on the proprietors of the several shares in proportion to their shares:

Provided that whenever it appears to the Collector that any partition proceedings have been unnecessarily delayed and the cost of the partition enhanced, by obstacles vexatiously put in the way of the completion of the proceedings by one or more of the proprietors, or by want of due diligence on the part of one or more of the proprietors in carrying out any requisition made upon him or them,

of 1897.]

(Chapter V.—Establishments and Costs.—Secs. 39-41.)

the Collector may direct that such portion of the cost as he may think proper, in excess of the amount proportionate to the share or shares of such proprietor or proprietors, shall be paid by him or them.

39. Whenever any local inquiry is held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-roll or other information which has been laid before the Deputy Collector,

Power of Deputy Collector to declare cost of local inquiry and by whom it is to be paid.

the Deputy Collector may declare the cost which has been incurred by such inquiry, and may direct that the entire cost so declared—

- (a) shall be paid by the person making the objection, or by any one of the proprietors ; or
- (b) shall be paid, in such proportions as the Deputy Collector thinks fit, by the said person and the proprietors or any of them ; or
- (c) shall be deemed to be a part of the cost of the partition.

40. (1) Upon the completion of a partition, the Collector shall make an order declaring the total cost thereof.

On completion of partition, total cost to be declared and account adjusted.

(2) The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or, if necessary, by levying from them, in the manner provided in section 108, any sums remaining due.

41. (1) Whenever it appears to the ¹[Provincial Government] that the work required to be done in connection with partitions under this Act in any district is so great that it would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, ²[it] may make an order directing that the salary of such one or more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

Power to direct that salary of Deputy Collector, and cost of special establishment, be recovered as part of costs of partitions.

(2) For the purposes of sub-section (1) the salary of a Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

(3) Whenever it appears to the ¹[Provincial Government] that the said work in any district is so great as to occupy a considerable portion, though not the whole, of the time of a Deputy Collector,

or whenever a special establishment is appointed under section 36,

¹These words were substituted for the words "Lieutenant-Governor" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This word was substituted for the word "he" by paragraph 5 (2), *ibid.*

(Chapter V.—Establishments and Costs.—Sec. 42.)

the ¹[Provincial Government] may direct that a portion of the salary of such Deputy Collector or the whole of the cost of such special establishment shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

**Estates Partition
Account.**

42. ²(1) The Provincial Government may direct that in any district an account, to be called the " Estates Partition Account " shall be kept in which shall be entered all sums levied from the proprietors of estates in such district in respect of partitions of their estates and of all costs of making partitions of estates in such district, whether such costs are costs directed under section 43 to be defrayed by any party to any proceedings in respect of a partition, or not.]

(2) When ³[the keeping of an Estates Partition Account] has been directed in any district, the charges leviable in that district from the proprietors of any estate under partition may, notwithstanding anything contained in the foregoing sections of this chapter, be levied according to a general scale of fees to be fixed by the Board.

(3) Such scale of fees shall be fixed, as nearly as may be, so that the receipts and expenditure ⁴[shewn in the said Account] shall balance one another, and shall be revised from time to time by the Board so as to secure compliance with this condition.

(4) The said fees shall be apportioned, and the proportionate amount thereof due from any proprietor or proprietors may be increased, in the manner and under the circumstances mentioned in section 38.

(5) The said fees shall be levied from the proprietors in such instalments and at such times as may be fixed in accordance with any rules which the Board may make in this behalf.

(6) An abstract of the ⁵[Estates Partition Account] of each district, made up to the end of each financial year, shall be published in the ⁶[*Official Gazette*] and posted up at the office of the Collector of the district.

⁷(7) A direction in force immediately before the commencement of Part III of the Government of India Act, 1935, that

26 Geo. V,
c. 2.

¹See foot-note 1 on p. 127, *ante*.

²Sub-section (1) was substituted for the original sub-section (1) by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words " the formation of Estates Partition Fund ", *ibid*.

⁴These words were substituted for the words " of the said Fund ", *ibid*.

⁵These words were substituted for the words " Estates Partition Fund ", *ibid*.

⁶These words were substituted for the words " *Calcutta Gazette* " by paragraph 4 (1), *ibid*.

⁷Sub-section (7) was inserted by Sch. IV, *ibid*.

of 1897.]

(Chapter V.—Establishments and costs.—Chapter VI.—Proceedings up to the Determination of the Partition.—Secs. 43-46).

an Estates Partition Fund shall be formed in any district shall, after that date, have effect as if it were a direction that an Estates Partition Account should be kept in that district.

43. (1) Whenever any Civil Court makes a decree awarding or declaring any proprietary right in an estate, and requires the Collector to make a partition of the estate, the Court shall, subject to the provisions of sections 38 and 39, at the same time direct either—

Order by Civil Court for payment by parties of costs of partition.

(a) that the party or parties who has or have withheld the right so decreed shall defray the whole of the costs of the partition or the whole of the fees payable in respect of the partition under section 42, or

(b) that the said costs or fees shall be defrayed by all or any of the parties to the suit in which the decree was made, in such proportions as the Court may, upon a consideration of the particular circumstances of the case, deem equitable.

(2) Copies of all orders passed under sub-section (1) shall be transmitted to the Collector for his guidance, together with the precept which the Court issues to him requiring him to divide the estate: and the Collector shall levy the said costs or fees from the parties, in accordance with the order, in the same manner and by the same means as if the levy of such costs or fees had been ordered by himself.

CHAPTER VI.

PROCEEDINGS UP TO THE DETERMINATION OF THE PARTITION.

44. Every Deputy Collector making a partition shall, as regards the estate under partition, have, so far as they are applicable, all the powers exercisable by a Survey-officer under the Bengal Survey Act, 1875, and by a Revenue-officer employed in preparing a record-of-rights under Chapter X of the Bengal Tenancy Act, 1885.

Powers of Deputy Collector in making a partition.

45. As soon as the Collector has recorded a proceeding under section 29, declaring an estate to be under partition, the Deputy Collector shall, subject to the provisions of section 49, make a survey and prepare a record of existing rents and other assets of all lands included in the estate.

Deputy Collector when to make survey and prepare record of existing rents and assets.

46. In making a survey and preparing a record of existing rents and other assets of land under section 45, the Deputy Collector shall ascertain and record the following particulars, namely :—

Particulars to be recorded.

(a) the name of each proprietor, landlord and tenant of the estate, and of every owner of revenue-free land and occupier of rent-free land therein ;

(b) the situation, area and boundaries of the land owned or occupied by each of the said persons, and the

Ben. Act
V of 1875.

VIII of
1885.

[Ben. Act V

(Chapter VI.—Proceedings up to the Determination of the Partition.—Secs. 47, 48.)

character and extent of the interest held by each and the area of all other land in the estate which is not held by tenants ;

(c) the rent then payable for all rent-paying lands,—

(i) as stated by the landlord,

(ii) as stated by the tenant, and

(iii) as taken by the Deputy Collector for the purposes of the partition ; and

(d) the assets, if any, of all other lands ;

and shall be guided by such rules as the Board may make under section 121, clause (l).

Attestation of
survey papers
and record of
existing rents
and assets.

47. (1) When the Deputy Collector has made a survey and prepared a record of existing rents and other assets of land under section 45, he shall publish a notification, in a form to be prescribed by the Board, fixing a day on which he will be present in the village, or at a convenient place within limits of distance to be fixed by general or special order of the Board, for the purpose of attesting the survey papers and record of existing rents and other assets.

(2) On the date fixed by the notification, or on any other date to which the proceedings may be adjourned, the entries made in the record of existing rents and other assets under section 46, or such of them as the Board may by rule prescribe shall be read out, and corrected or added to as may appear necessary, in the presence of such of the interested persons as are in attendance.

(3) If the correctness of any entry is disputed, the Deputy Collector shall note the statements of such of the persons aforesaid as are interested in the disputed entry and shall, after making such local inquiry, if any, as he thinks fit, pass a summary order declaring what entry shall be accepted for the purposes of the partition.

(4) If the correctness of any measurement is called in question and a fresh measurement is demanded, the Deputy Collector may require the costs of the re-measurement to be deposited.

(5) If the re-measurements shows the original measurement to have been inaccurate, the amount deposited shall be refunded to the objector.

Publication
of survey
papers and
record of
existing rents
and assets

48. When the survey papers and the record of existing rents and other assets have been attested as provided in section 47, the Deputy Collector shall cause a copy thereof to be locally published in such manner and for such period as the Board may by rule prescribe, and there shall be furnished to each landlord and tenant a copy of such of the entries relating to his estate, tenure, or holding, as the case may be, as the Board may by rule prescribe.

of 1897.]

(Chapter VI.—Proceedings up to the Determination of the Partition.—Chapter VII.—Partition by Amicable Arrangement or by Arbitration.—Secs. 49-51.)

49. If at any time a survey of the estate under partition or any part thereof has been made or a record-of-rights prepared by an officer appointed in that behalf under the orders of the ¹[Provincial Government], or

Power of Deputy Collector to accept previous survey, record-of-rights, measurements or rent-rolls, instead of making a new survey and a record of existing rents and assets.

if any measurement papers and rent-rolls are filed under section 19, or at any time before a survey has been begun under section 45, and if the correctness of such measurement papers and rent-rolls is admitted in writing by all the proprietors, and is verified by the Deputy Collector after testing on the spot, and if the Deputy Collector is satisfied that the land-revenue would not be endangered,

the Deputy Collector may, unless the Collector otherwise directs, and after making any correction which may appear necessary, accept the papers of such survey, or the said record-of-rights, measurement papers or rent-rolls, instead of making a new survey and preparing a record of existing rents and other assets under section 45.

50. When the documents referred to in section 48 have been published or any documents referred to in section 49 have been accepted, the Deputy Collector shall record an order stating that such documents have been adopted for the purposes of the partition and shall—

Record of order, fixing of day for determining partition, and service of notices.

(a) fix a day on which to determine the partition of the lands into the several separate estates,

(b) publish a notification calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and at the same time serve a notice on each of the proprietors to the same effect, and

(c) serve a similar notice on the proprietors of each of the adjoining estates, inviting them to appear and file their objections, if any, if they dispute the possession of any land of the estate under partition.

CHAPTER VII.

PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

51. (1) If all the recorded proprietors present, on or before the day fixed under section 50, a petition requesting

Power to allow partition to be made by proprietors themselves or by arbitrators.

¹These words were substituted for the word "Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act V

(Chapter VII.—Partition by Amicable Arrangement or by Arbitration.—Secs. 52-55.)

to be allowed to make the partition on the basis of the papers adopted by the Deputy Collector under Chapter VI,—

(a) privately among themselves, or

(b) by arbitration,

the Deputy Collector may grant the request.

(2) If, after such request has been granted, the proprietors or the arbitrators fail to make the partition within such time as may be fixed by the Deputy Collector in that behalf, the Deputy Collector shall make the partition himself.

Procedure on
reference to
arbitration.

52. When a partition has been referred to arbitration, the proceedings shall, except as hereinafter otherwise expressly provided, be conducted in accordance with the provisions of ¹[rules 1 to 16 in Schedule II to the Code of Civil Procedure, 1908], so far as they are applicable.

Act V of
1908.

Arbitrators to
deliver a
partition paper.

53. (1) The arbitrator or arbitrators shall within a period to be fixed by the Deputy Collector, which period may be further extended by him, deliver to the Deputy Collector a full and complete paper of partition, in such form as the Board may, by rule, prescribe.

(2) If default is made in complying with sub-section (1), the Deputy Collector may withdraw the case from arbitration and may make the partition himself.

Remuneration
of arbitrators.

54. (1) The arbitrator or arbitrators, on delivering the paper of partition as aforesaid, shall be entitled to reasonable fees for his or their services.

(2) The amount of such fees shall be fixed, with the approval of the Commissioner, by the Deputy Collector who made the reference to arbitration, and shall be deemed to form part of the costs of making the partition.

Approval of
Collector and
other authorities.

55. Every partition made under this chapter by proprietors or by an arbitrator or arbitrators shall be subject to the approval of the Collector and the confirmation of the Commissioner:

Provided that no such partition shall be disallowed except—

(a) on the ground of fraud, or

(b) on the ground that the partition cannot be confirmed without endangering the safety of the land-revenue.

¹These words and figures were substituted for the words and figures "sections 506 to 522 (both inclusive) of the Code of Civil Procedure" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

of 1897.]

(Chapter VII.—Partition by Amicable Arrangement or by Arbitration:—Chapter VIII.—Making of Partitions by the Deputy Collector, and approval thereof by the Collector.—Secs. 56-58.)

56. When a partition has been made under this chapter, the land-revenue on each separate estate into which the parent estate is divided by such partition shall be assessed by the Collector in the manner prescribed by section 10.

Assessment of land revenue.

CHAPTER VIII.

MAKING OF PARTITIONS BY THE DEPUTY COLLECTOR, AND APPROVAL THEREOF BY THE COLLECTOR.

57. (1) If no petition is presented under section 51, the Deputy Collector shall, on the day fixed under section 50, or on any subsequent day or days to which the hearing may be postponed by notice posted at his office,—

Procedure where no petition presented under section 51.

(i) consult all proprietors who are present, and

(ii) hear, and after such inquiry as he may consider necessary, dispose of any objections which they may urge.

(2) The Deputy Collector shall then proceed to determine how the lands of the parent estate shall be partitioned into the separate estates, and all matters arising out of such partition; and shall cause to be prepared—

(a) a paper of partition, in a form prescribed by rules made by the Board, specifying in detail—

(i) the lands which he has included in each separate estate, and the area of such lands.

(ii) the rental of such lands, and the other assets, if any, of each separate estate,

(iii) the name or names of the recorded proprietor or proprietors of each separate estate,

(iv) any stipulations which may have been made regarding places of worship, tanks or other matters mentioned in Chapter IX, and

(v) the amount of land-revenue to be assessed on each separate estate in the manner prescribed by section 10; and

(b) a map showing the lands which fall within each separate estate and the boundaries of such lands.

(3) In making the partition the Deputy Collector shall be guided by the provisions of Chapter IX, and shall make the partition in the manner which, in his opinion, is on the whole most in accordance with those provisions and most equitable and convenient to all parties concerned.

58. (1) The partition, as made under this chapter, shall be submitted for the sanction of the Collector, and he shall by notice fix a day for the consideration of the same.

Submission of case to Collector; his duties.

(Chapter VIII.—Making of Partitions by the Deputy Collector, and approval thereof by the Collector.—

Sec. 59.)

(2) Every such notice shall be served on the proprietors and shall be published in the manner prescribed by section 104.

(3) The day fixed by the said notice shall be not less than fifteen days after the publication of the notice at the Collector's office.

(4) After hearing and disposing of any objection which may be preferred, the Collector shall pass such orders as he may think proper---

(a) approving the partition, with or without amendments ; or

(b) making a new partition ; or

(c) returning the papers to the Deputy Collector for amendment of the partition, or for making a new partition, with such directions as to the Collector may seem fit in regard to the issue of a notice to appear to the proprietors or any of them who are specially interested.

(5) If the papers are returned to the Deputy Collector, the Collector shall, on their re-submission, proceed again to consider the partition as provided in the foregoing sub-sections of this section.

Duties of Deputy Collector when partition has been approved by Collector, or when Collector makes a new partition.

59. (1) When the partition has been approved by the Collector, the Deputy Collector shall, after making such alterations as may be necessary in the partition paper or map, or preparing a new partition paper or map, in accordance with the orders passed by the Collector,

(a) cause to be prepared a separate extract of the portion of the partition paper which relates to each separate estate ;

(b) cause to be tendered to any recorded proprietor of a separate estate, or any authorized agent of such proprietor, who may be in attendance at the Deputy Collector's office, the extract which relates to such separate estate, and

(c) publish a notification at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not been tendered as aforesaid, to take out of the Deputy Collector's office the extract of the portion of the partition paper relating to his separate estate.

(2) If the circumstances of the partition so require, an extract of the map prepared by the Deputy Collector, or a copy of such map, shall be annexed to every separate extract from the partition paper mentioned in sub-section (1).

(3) The Deputy Collector shall also proceed in the manner hereinbefore provided when the Collector makes a new partition.

of 1897.]

(Chapter VIII.—*Making of Partitions by the Deputy Collector, and approval thereof by the Collector.*—Chapter IX.—*General Principles for making partitions.*—Secs. 60-63.)

60. No proprietor who has failed to appear before the Deputy Collector in person or by agent on a day fixed, under section 50 or section 57 for the partition of the lands into the several separate estates, and no proprietor who has failed so to appear before the Collector on a day fixed under section 58, shall, unless he shows sufficient cause for such failure, be entitled at any subsequent time to make any objection to the orders which may be passed on such days respectively.

Proprietor not appearing on fixed day not entitled to make objection.

61. When a partition has been approved by the Collector, or when he has made a new partition, and after the tender of extracts and the publication of a notification as provided in section 59, the Collector—

Submission of the papers to the Commissioner after approval of the partition by the Collector.

shall cause a notice to be served on each of the recorded proprietors, stating that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days from the date of the service of the said notice ;

and shall, after the issue of such notice, forward to the Commissioner all papers relating to the partition.

CHAPTER IX.

GENERAL PRINCIPLES FOR MAKING PARTITIONS.

Lands held in common tenancy.

62. Each separate estate shall be made as compact as is compatible with the primary object of making an equitable partition among the proprietors and with the provisions of this chapter.

Separate estates to be made compact.

63. In selecting the villages or land to be assigned to each separate estate formed out of a parent estate which has been held in common tenancy, the Collector shall take into consideration the advantages or disadvantages arising from—

Circumstances to be considered in making partitions.

- (a) situation ;
- (b) the vicinity of roads, railways or navigable rivers or canals ;
- (c) the nature and quality of the soil and produce ;
- (d) the quantity of cultivable and uncultivable waste land ;
- (e) the facilities for irrigation ;
- (f) the state of embankments and water-courses ; and
- (g) liability to accretion and diluvion ;

and any other circumstances affecting the value of the land.

[Ben. Act V

(Chapter IX.—General Principles for making Partitions.—
Secs. 64-69.)

Rights when dwelling-house belonging to one proprietor is situated on land to be allotted to another proprietor.

64. (1) If a dwelling-house belonging to one proprietor is situated on any land which it may be necessary to include in the separate estate of another proprietor, the owner of the house may retain occupation thereof, with the buildings and grounds immediately attached thereto, upon agreeing to pay rent annually in perpetuity for the land occupied by the house, buildings and grounds to the proprietor of the separate estate in which such land is included.

(2) The limits of the land so occupied and the rent to be paid for it shall be fixed by the Deputy Collector, and shall be stated in the paper of partition.

(3) In every such case a defined pathway shall, as far as possible, be secured to the owner of the house, leading from the house to some portion of the separate estate allotted to him.

Power to apply section 64 to gardens, etc.

65. Whenever the Deputy Collector thinks fit, he may apply the provisions of section 64 to gardens, orchards, land planted with bamboos, and any other land which in his opinion is of special value to the proprietor in whose occupation it is found to be, in consequence of improvements made by such proprietor or of the particular use to which such land is put.

Rent for land fixed under section 64 or 65 deemed to be the assets of the land.

66. The rent fixed in perpetuity on any land by the Deputy Collector under section 64 or section 65 shall be deemed, for the purposes of the partition, to be the assets of such land.

Redemption of rent fixed under section 64.

67. When the dwelling-house of one proprietor, with the buildings and grounds immediately attached thereto, has been included in the separate estate of another proprietor, and the rent to be paid in perpetuity for the land occupied thereby has been fixed by the Deputy Collector and stated in the paper of partition,

the first-mentioned proprietor may apply to the Deputy Collector for permission to redeem the rent so fixed, and the Deputy Collector shall give such permission unless he is of opinion that the redemption would endanger the safety of the land-revenue for the payment of which the separate estate in which such dwelling-house, buildings and grounds have been included will be liable.

Amount payable in redemption of rent.

68. (1) If the Deputy Collector give permission as aforesaid, he shall certify the amount payable by the applicant in redemption of the rent.

(2) Such amount shall be ten *per centum* above the sum which would be required to produce, in interest at four *per centum per annum*, an annual sum equal to the said rent.

Such amount when payable.

69. The amount certified under section 68 may be paid to the Deputy Collector at any time before, but not after, possession is under section 94, given to the several proprietors of the separate estates allotted to them.

of 1897.]

(Chapter IX.—General Principles for making Partitions.—
Secs. 70-73.)

70. On receipt of such payment, the Deputy Collector shall give notice to the proprietor in whose separate estate the land is situated—

Notice of pay-
ment to be
given, and
land to be
held rent-free.

- (a) that such payment has been made ;
- (b) that the sum will be paid to him or to his authorized agent on application, and
- (c) that, from the date on which possession as aforesaid is given, the proprietor who has redeemed the rent of such land will be entitled to hold the land as a rent-free tenure secured against the proprietor to whom the notice is given and against any auction-purchaser at a sale for arrears of revenue, including the ¹[Crown] ;

and from such date the land shall be so held as a rent-free tenure.

71. The Deputy Collector shall at the same time give notice to the Collector of the district of the creation of such tenure, and the Collector shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of ²[the Bengal Land-revenue Sales Act, 1859,] or by any similar law for the time being in force.

Collector to
register the
rent-free
tenure.

72. When two or more of the separate estates consist of the same proportions of the parent estate, the Deputy Collector may, if he thinks proper, direct the parties entitled thereto respectively to draw lots in his presence for the equal separate estates which have been formed by assignment of land,

Drawing of
lots for equal
shares.

unless the recorded proprietors of the equal shares agree among themselves as to the allotment of the equal separate estates and present a petition to that effect, or

unless for any other reason the Deputy Collector, with the sanction of the Collector, thinks proper to assign the equal separate estates to the proprietors of the equal shares without causing lots to be drawn.

73. (1) When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate ;

Order and
method of
drawing lots
when
aggregate of
two or more
shares equals
one other
share, or
equals the
aggregate of
two or more
other shares.

and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn ;

¹This word was substituted for the word "Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 1 on p. 118, *ante*.

*(Chapter IX.—General Principles for making Partitions.—
Sec. 74.)*

and may cause lots to be drawn in like manner as often as he thinks proper for such purpose.

(2) After lots have been drawn once (or more than once if necessary) as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot to each aggregate share, among the proprietors of the different shares which were formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such portion in such position as the Deputy Collector may think proper.

Illustrations.

I.—The partition of a parent estate is being made into the following shares :—

8 annas.	3 annas.
4 annas.	1 anna.

For the purposes of drawing lots, the 4 annas, 3 annas and 1 anna shares may be taken together, and considered to be an aggregate 8 annas share.

The Deputy Collector will divide the parent estate into two halves of equal value, and will then cause lots to be drawn, in order to determine which of the two halves shall be assigned to the proprietor of the integral 8 annas share, and which shall be divided among the proprietors of the 4 annas, 3 annas and 1 anna shares.

Subsequently, if necessary, the Deputy Collector may again cause lots to be drawn by the proprietor of the 4 annas share on the one hand and the proprietors on the other hand of the aggregate share made up by taking together the 3 annas share and the 1 anna share.

II.—The partition is being made of a parent estate into the following shares :—

6 annas.	3 annas.
4 annas.	2 annas.
	1 anna.

Two tracts in the estate may first be marked off, the value of each being equivalent to a 6 annas share; and then, for the purpose of drawing lots in respect of the assignment of these two tracts, the 4 annas share and the 2 annas share may be taken together as an aggregate 6 annas share, and lots may be drawn between the proprietor of the aggregate 6 annas share so formed on the one hand, and the proprietor of the integral 6 annas share on the other.

One of the two 6 annas tracts having thus been finally assigned to the proprietor of the integral 6 annas share, the Deputy Collector will proceed to assign the rest of the estate among the remaining shares; and he may again, for the purpose of causing lots to be drawn, mark off two tracts, the value of each of which shall be equivalent to 5 annas of the parent estate, and may cause lots to be drawn for those two tracts between the proprietors of the 4 annas share and the 1 anna share taken together as an aggregate 5 annas share on the one hand, and the proprietors of the 3 annas share and the 2 annas share taken together as another 5 annas share on the other.

Finally, their separate estates will be assigned to the proprietor of the 4 annas share and of the 1 anna share respectively, within the tract which fell to them jointly by lot; and their separate estates will be assigned to the proprietors of the 3 annas share and of the 2 annas share respectively within the tract which fell to them jointly by lot.

of 1897.]

*(Chapter IX.—General Principles for making Partitions.—
Secs. 74-76.)*

74. The Deputy Collector may, by notice, require any proprietor, in respect of whose share lots are to be drawn as provided in section 72 or section 73, to attend at the office of the Deputy Collector in person or by authorized agent, at a time to be fixed by the Deputy Collector, for the purpose of drawing lots ;

Deputy Collector may require proprietors to attend or appoint agent for the purpose of drawing lots.

and may similarly require the proprietors of any shares which he may have ordered to be formed into an aggregate share for the purpose of drawing lots, jointly to appoint an agent to draw lots on their joint behalf, and if at the time fixed for drawing such lots, such proprietors have failed to agree to any such joint appointment, or fail to cause the attendance of an agent authorised to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

75. If any proprietor or proprietors fail to comply with a requisition of the Deputy Collector under section 74, the Deputy Collector may appoint a person to draw lots on behalf of such proprietor or proprietors.

In default, Deputy Collector may appoint a person to draw lots.

Lands held in severalty.

76. (1) When the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor is, in pursuance of such arrangement, in possession of separate lands held in severalty as representing his interest in the estate, the joint applications presented under section 7 may be to the effect—

Partition according to separate possession, and apportionment of land-revenue.

(a) that a partition of the estate be made by assigning to each proprietor or to two or more proprietors jointly, as his or their separate estate or estates, the lands of which they are in separate possession in pursuance of such arrangement, and

(b) that each separate estate so formed be made liable for such portion of the entire land-revenue of the parent estate as was paid by the proprietor or proprietors thereof under the private arrangement aforesaid.

(2) The Deputy Collector who is appointed to carry out the partition in accordance with such application shall satisfy himself that the assets of each separate estate which it is proposed to form will be sufficient to secure the payment of the annual amount of land-revenue for which it is proposed to make such separate estate liable.

(3) If the Deputy Collector is not satisfied that the assets of each such separate estate will be sufficient as aforesaid, or that with reference to the circumstances of the case, the partition of the land and the assessment of the land-revenue

[Ben. Act V

(Chapter IX.—General Principles for making Partitions.—
Secs. 77-80.)

thereon may be made in the manner proposed without endangering the safety of the land-revenue, he shall reject the application, unless all the recorded proprietors agree that the land-revenue for which the parent estate is liable shall be apportioned among the separate estates so to be formed in such a manner that the safety of the total amount of the land-revenue shall not be endangered.

Lands of which each proprietor is in possession to be allotted to him.

77. Whenever the Deputy Collector who is appointed to carry out a partition finds that, in pursuance of a private arrangement formally made and agreed to by all the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate parcels of land held in severalty as representing portions only of their respective interests in the parent estate, while other land of the parent estate is held in common tenancy between such proprietors, then, notwithstanding anything contained in section 7, a joint application shall not be required, and the Deputy Collector shall allot to the separate estate of each proprietor the land of which such proprietor is found to be in possession in severalty in accordance with such private arrangement.

Explanation.—Land held in the occupation of the several proprietors of an estate as, *sir*, *khamar* or *nij-jot*, or under any other similar denomination, shall not be deemed to be land held in severalty as representing portions of their respective interests in the parent estate within the meaning of this section, which applies only to cases in which there has been a *bona fide* division, by private arrangement among the proprietors of land held by tenants.

Collector may cause transfer of lands agreed to by parties.

78. Notwithstanding anything in section 77, the Collector may cause any transfer of land agreed to by the parties to be made from the possession of one proprietor to that of another.

Lands held in common tenancy and Lands held in severalty.

Places of worship, etc.

79. Places of worship, burning-grounds and burial-grounds which have been held in common previous to the partition of an estate, and land of which the proceeds have been assigned by the proprietors jointly for religious, charitable or public purposes, shall continue to be held in common unless the proprietors otherwise agree among themselves, in which case they shall state in writing the agreement into which they have entered, and the Deputy Collector shall enter a note of the agreement in the paper of partition.

Tanks, wells, water-courses, reservoirs and embankments.

80. (1) Tanks, wells, water-courses, reservoirs and embankments shall be deemed to be attached to the land for the benefit of which they were originally made.

(2) In cases in which, from the extent, situation or construction of any such works, it is found necessary that they should remain the joint property of the proprietors of two or

of 1897.]

*(Chapter IX.—General Principles for making Partitions.—
Secs. 81-83.)*

more separate estates, the paper of partition shall specify, as far as the circumstances admit, the extent to which the proprietors of each of such estates may make use of the same, and the proportion of the charges for repairs to be borne by them respectively.

81. (1) No tenure or holding shall be split up for the purposes of a partition unless it is reasonably necessary to do so in order to effect an equitable partition.

Splitting-up of tenure or holding, and apportionment of rent thereof.

(2) If a tenure or holding be split up as aforesaid, the total existing rent thereof, as ascertained under Chapter VI, shall not be altered, but shall be apportioned among the several parts into which the tenure or holding is divided.

(3) When it is proposed to split up a tenure or holding and apportion the rent thereof as aforesaid, the Deputy Collector shall cause a notice to be served on the tenants concerned and, after hearing their objections, if any, may order that the tenure or holding be split up, and that the rent thereof be apportioned as aforesaid.

(4) The Deputy Collector shall notify such apportionment to the tenants concerned.

82. [*Land held rent-free not to be divided, except with consent of recorded proprietors.*] Rep. by s. 2 of the *Estates Partition (Amendment) Act, 1935* (Ben. Act VI of 1935).

83. (1) When the Deputy Collector finds in a parent estate any land which is held at a fixed rent on a *patni* or other permanent intermediate tenure created by all the proprietors of the estate or admitted by all the recorded proprietors to have been so created, he may either—

Land held at fixed rent on permanent intermediate tenure.

(a) assign such land and the assets thereof entirely to one or more of the separate estates formed out of the parent estate; or

(b) leave such land unassigned to any separate estate, and specify in the partition paper and proceedings that the land is left appertaining jointly to all the separate estates which are formed out of the parent estate in the proportion which each separate estate bears to the parent estate.

(2) In the event of such land being so left unassigned, the Deputy Collector shall assign to each separate estate such share of the rent of the tenure as bears the same proportion to the entire rent of the tenure as the separate estate bears to the parent estate.

[Ben. Act V

(Chapter IX.—General Principles for making Partitions.—
Secs. 84-86.)

(3) In dealing with a tenure under this section, the Deputy Collector shall take into consideration the extent of the land comprised in the tenure, and all other circumstances of the case.

Land held in common between the proprietors of two or more estates how to be dealt with when one estate is under partition.

84. When any land is held in common between the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common land of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common land ;

and all the provisions of this Act in respect of the allotment, between the shareholders in one estate, of land which is held jointly by such shareholders, shall, as far as possible, apply to the allotment of the proportionate share of such common land to the estate under partition ;

and, in respect of the service of notices, the hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and all other proprietors of estates who have an interest in the said common land, shall be deemed to be joint proprietors of a parent estate consisting only of the land so held in common :

Provided that all costs of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be costs of making the partition of the estate which is under partition, and shall be leviable, as provided by this Act, from the proprietors of such estate ; and the proprietors of any other estate having an interest in such lands shall not be required to bear any portion of such costs.

When proprietors of other estates may be required to pay a portion of the costs of making a division under section 84.

85. Notwithstanding anything contained in section 84, if it appears to the Collector that the proceedings for any such division have been unnecessarily delayed and the cost of such division enhanced, by obstacles vexatiously put in the way of the completion of such division by any proprietor of any estate other than that under partition, or by want of due diligence on the part of any such proprietor in carrying out any requisition made upon him,

the Collector may direct that such sum as he shall think fit shall be levied from every such proprietor who is responsible for such delay or additional cost ;

and every sum so levied shall be taken in diminution of the amount payable by the proprietors of the estate under partition as costs of such partition.

Allotment made under section 84 to be submitted to the Collector.

86. Every allotment made under section 84 shall be submitted for the approval of the Collector, who may confirm, amend or reject the same, and if he rejects it, may make or direct to be made another allotment.

of 1897.]

*(Chapter IX.—General Principles for making Partitions.—
Secs. 87, 88.)*

87. When any allotment made under section 84 has been approved by the Collector, the land so allotted shall be dealt with in every respect as if it were held in common tenancy by such of the proprietors of the estate under partition as were found to hold interests in the common land.

Land so allotted how to be dealt with.

88. (1) If a dispute or doubt is found to exist as to whether any land forms part of a parent estate, the Deputy Collector shall, after due notice to the parties interested inquire into the fact of possession and shall report his conclusions to the Collector; and thereupon the Collector shall dispose of the matter as follows:—

Procedure when dispute or doubt exists as to whether any land forms part of a parent estate.

(a) he may order that the partition case be struck off the file, if such an order appears to him advisable, and whether the possession of the disputed land is with the proprietors of the parent estate or otherwise; or

(b) he may order that the partition shall proceed, and that the disputed land be treated as part of the estate under partition, if the possession of such land is with the proprietors of the parent estate and the claim of the other parties to the right in such land appears to him untenable; or

(c) he may order that the partition shall proceed, but that the disputed land shall not be treated as part of the estate under partition, if the possession of such land is with the other parties and the claim of the proprietors of the parent estate to the right in such land appears to him untenable:

Provided as follows:—

(i) if a claim to land alleged to be in dispute is filed after the Deputy Collector proceeds under section 57 to determine how the lands of the parent estate shall be partitioned into the separate estates, the claim shall not be inquired into under this section unless the delay on the part of the claimant is explained to the satisfaction of the Deputy Collector;

(ii) no partition shall be made in any case mentioned in this section if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate at any subsequent time would, in the opinion of the Collector, endanger the safety of the land-revenue for which such estate would be liable after the partition.

(2) If a partition case is struck off the file under clause (a) of this section, no fresh application for partition shall be admitted unless and until the applicant shows that the dispute or doubt aforesaid has been decided by a Court of competent jurisdiction, or has been amicably settled; but if a fresh

(Chapter IX.—General principles for making Partitions.—

Chapter X.—Procedure before the Commissioner up to the completion of a Partition.—Secs. 89, 90.)

application is admitted, the proceedings shall be revived from the point at which they were interrupted.

Procedure when partition completed in pursuance of order under section 88, clause (b), and proprietor of an estate dispossessed of any land by decree.

89. If, after a partition has been completed in pursuance of an order passed by the Collector under section 88, clause (b), the proprietor of any separate estate is dispossessed by a decree of a Court of competent jurisdiction of any land which has been assigned to his estate by the partition,

the partition shall not be disturbed, but such proprietor shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession ;

and such compensation may be recovered in a Court of competent jurisdiction from the proprietors of those separate estates on which a proportionate share of the total loss caused by the dispossession does not fall.

CHAPTER X.

PROCEDURE BEFORE THE COMMISSIONER UP TO THE COMPLETION OF A PARTITION.

Procedure if proceedings require amendment or if appeal or objection presented.

90. (1) If it appears to the Commissioner that the proceedings of the Collector should be amended, or if an appeal or objection is presented within the time allowed by section 61, the Commissioner shall, by order, fix a day (not being less than thirty days from the date of such order) for hearing and disposing of the case, and shall cause notice of such day to be served through the Collector on all the parties.

(2) On the day so fixed, or on any subsequent day to which the hearing of the case may extend or is postponed by a notice posted up in his own office the Commissioner shall, after hearing and disposing of all appeals and objections, and calling for any further information which he may consider necessary either confirm the partition as approved or made by the Collector, with or without amendments, or return the papers of the partition to the Collector for any amendments which the Commissioner may think proper to be made.

(3) If the papers are returned to the Collector for amendment, the Collector shall proceed to make the required amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to

of 1897.]

(Chapter X.—Procedure before the Commissioner up to the completion of a Partition.—Secs. 91-93.)

him for approval by a Deputy Collector, and shall thereafter return the papers to the Commissioner, who may then confirm the partition.

91. If it does not appear to the Commissioner that the proceedings of the Collector require amendment, or if no appeal or objection is presented within the time allowed by section 61, the Commissioner may proceed to consider the case without issuing any notice, and may confirm the partition as approved or made by the Collector.

Procedure in other cases.

92. The Commissioner may, before confirming a partition, return the papers for amendment or inquiry as often as he thinks fit, and as often as he so returns them the procedure prescribed in the foregoing sections of this chapter shall be applicable.

Commissioner may return the papers for amendment or inquiry as often as he thinks fit.

93. (1) After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition,

Procedure by Collector on receipt of Commissioner's order confirming, or Board's order sanctioning, a partition.

or if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board, then on receipt of the final order of the Board, if such order does not set aside but maintains, with or without amendments, the partition as confirmed by the Commissioner,

the Collector shall cause to be published at his office, and at some conspicuous place in each of the estates separately constituted by the order of the Commissioner or the Board, as the case may be, a notice that the partition has been confirmed or sanctioned by the Commissioner or the Board, with or without amendments, as the case may be.

(2) If the partition as so confirmed or sanctioned involves any amendments which may conveniently be made on any extracts of the partition paper or on any maps which have been prepared and delivered to recorded proprietors under section 59, the Collector shall cause a notice to be served on every recorded proprietor whose estate is affected by such amendments, requiring him to produce such extracts and maps in order that such amendments may be noted on them ;

and, if the alterations made in the partition as so confirmed or sanctioned be such as to make it desirable to prepare fresh extracts or maps as aforesaid, the Collector shall cause such fresh extracts or maps to be prepared ; and shall cause a notice to be served on each proprietor declaring the extract and map which was delivered under section 59 to be cancelled, and requiring him to take out of the Collector's office the fresh extract or map which has been prepared.

[Ben. Act V

(Chapter X.—*Procedure before the Commissioner up to the completion of a Partition.*—Secs. 94-96.)

Procedure as to giving possession of separate estates.

94. (1) The Collector shall then proceed to give the several proprietors possession of the separate estates allotted to them, and, if necessary, may require the assistance of the Magistrate in giving such possession ;

and shall cause to be served on every recorded proprietor of a separate estate a notice—

- (a) informing him that from the date specified in such notice the separate estate assigned to him, as described in the extract from the partition paper prepared and delivered or tendered to him under section 59 or section 93, as the case may be, will be deemed to be separated from the parent estate, and to be separately liable for the amount of land-revenue specified in the notice, and
- (b) calling upon him to enter into a separate engagement for the payment of such land-revenue.

(2) The date specified in such notice shall be not more than three months after the proprietors have been given possession of their respective separate estates as provided in sub-section (1).

Each separate estate to be borne on the revenue-roll and General Register as separately liable for the land-revenue assessed upon it.

95. From the date specified in such notice, each separate estate shall be borne on the revenue-roll and General Register of the Collector as a distinct estate separately liable for the amount of land-revenue assessed upon it under this Act, and shall be so liable whether or not the proprietor has entered into a separate engagement for the payment of the amount of land-revenue so assessed upon the estate.

Boundary marks.

96. (1) The Collector may direct the erection of such boundary marks as he thinks proper, to distinguish the lands of each separate estate ; and the cost of such boundary marks shall be deemed to be costs of the partition.

(2) Boundary marks so erected shall be assigned to zamindars, or to zamindars jointly with tenure-holders, for preservation, as provided in the third clause of section 29 of the Bengal Survey Act, 1875 ; and after they have been so assigned, the provisions of sections 19, 20 and 52 to 57 (both inclusive) of the said Act shall apply in the case of such boundary marks.

Ben. Act V
of 1875.

of 1897.]

(Chapter XI.—Miscellaneous.—Secs. 97-99.)

CHAPTER XI.

MISCELLANEOUS.

Act V of
1908.

97. For the purposes of any inquiry under this Act, the Deputy Collector shall, in addition to the powers specifically conferred upon him by this Act, have the powers conferred by [sections 30, 31 and 32 of, and Orders XI, XII, XIII and XVI in Schedule I to, the Code of Civil Procedure, 1908,] for compelling the production of documents and enforcing the attendance of witnesses.

Powers of Deputy Collector as to production of documents and attendance of witnesses.

98. The Deputy Collector, with the consent of all the parties concerned, may refer to arbitration any point arising in the course of a partition; and the provision of sections 52, 53 and 54 shall, as far as possible, be applicable to such references.

General power to refer to arbitration.

99. If any proprietor of an estate held in common tenancy and brought under partition in accordance with this Act has given his share or a portion thereof in *patni* or other tenure or on lease, or has created any other incumbrance thereon, such tenure, lease or incumbrance shall hold good as regards the lands finally allotted to the share of such proprietor, and only as to such lands.

Saving of tenures, leases and incumbrances.

Illustrations.

I.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a *patni* tenure of the whole of his interest in the estate entitling B, as long as such estate is held in common tenancy, to collect one-fourth of the rent payable by every *raiyat* on the estate; and

partition of the said estate is made under this Act, and certain specific lands are assigned to A as his separate estate.

B will become *patnidar* of the entire separate estate which has been assigned to A, and will be entitled to collect the whole of the rents from the *raiya*s on that estate.

II.—A, a proprietor of a quarter share in a joint-undivided estate held in common tenancy, gives to B a *patni* tenure of one-half of his share in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-eighth of the rent payable by every *raiyat* on the estate; and

partition of the estate is made under this Act, and certain specific lands are assigned to A as his separate estate.

B will become *patnidar* of one-half of A's separate estate and will hold his *patni* in common tenancy with the half of A's interest which A has not given in *patni*, so that B will be entitled to collect one-half of the rent payable by every *raiyat* on A's estate, and A will be entitled to collect the other half.

These words and figures were substituted for the words and figures "Chapters X and XIV of the Code of Civil Procedure," by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)

(Chapter XI.—Miscellaneous.—Secs. 100-103.)

Uniting of
estates.

100. (1) If two or more estates come into the possession of one proprietor or of the same body of proprietors, such proprietor, or body of proprietors may, after being recorded as proprietors, apply to have the estates united and to hold them as a single estate.

(2) Every such application shall be made in writing to the Collector, and the Collector shall, if he sees no objection to doing so, comply with it not less than thirty days after the publication of a notification thereof, and shall then cause the necessary entries to be made in the records of his office and report the case to the Commissioner.

If separate
estate falls
into arrear,
Collector to
inquire into
cause and
report to Com-
missioner.

101. If any separate estate created under this Act falls into arrear so as to necessitate a sale of the land for the discharge of the arrear at any time within six years from the date of the confirmation or sanction of the partition by the Commissioner or the Board, as the case may be,

the Collector shall, if possible, ascertain the cause of the estate having fallen into arrear, and shall inquire whether the same is due to any fraudulent or erroneous allotment of the assessment or assignment of lands at the time of the partition, and shall make a report upon the case to the Commissioner for such action as the Commissioner may think proper.

Power of
Provincial
Government
to order a new
allotment of
the land-
revenue.

102. If it is proved to the satisfaction of the ¹[Provincial Government] at any time within six years from the date of the confirmation or sanction of a partition by the Commissioner or the Board, as the case may be, whether or not upon inquiry made under section 101, that through any fraud or error at the time of making the partition the assets of the lands assigned to any separate estate were not in proportion to the amount of land-revenue for which such estate was made liable, or that the amount of land-revenue assessed on any separate estate was not in proportion to the assets of the lands assigned to such estate,

the ¹[Provincial Government] may order a new allotment of the land-revenue upon the separate estates in accordance with the principles prescribed in this Act, on an estimate of the assets of each such estate as they stood at the time of the partition, such estimate being made on such evidence and information as may be procurable.

Power to
require
proprietors of
under-assessed
estates to
make refund
to proprietors
of over-
assessed
estates.

103. (1) Whenever the ¹[Provincial Government] passes an order under section 102 for the re-allotment of the land-revenue on any separate estate, ²[it] may direct that the proprietors whose estates ³are found to have been under-assessed shall, for each year during which they have held possession of the separate estates, be required to pay, to the recorded proprietors of the estates which have been over-assessed, a sum equal to the annual amount in which the

¹See foot-note 1 on p. 127, *ante*.

²See foot-note 2 on p. 127, *ante*.

of 1897.]

(Chapter XI -- Miscellaneous. -- Secs. 104-106.)

latter are found to have been over-assessed; and in default of payment such sum shall be recoverable as provided in section 108.

(2) No order passed by the ¹[Provincial Government] under sub-section (1) shall be liable to be contested in any Court.

104. Every notification required by this Act to be published shall, unless it is otherwise specially directed, be published by posting up copies of the same—

Publication of notifications.

- (a) at the office of the Collector,
- (b) at the office of the Deputy Collector who is to make is making or has made the partition,
- (c) at the village office or village offices, if any, of the proprietors of the parent estate, and
- (d) in one or more of the principal villages in the said estate.

105. (1) Any notice required by this Act to be served on any person may be served—

Service of notices.

(a) by delivering the notice to the person to whom it is directed, or, on failure to effect such delivery, by posting it on some conspicuous part of the house in which the said person usually resides; or

(b) by sending a registered letter, containing the notice, to such person directed to the address, if any, which he has registered under this Act; or

(c) by delivering the notice to a general agent of the person to whom it is directed, or to any person who has been appointed in that behalf, or who has been appointed an agent of the person to whom the notice is directed for the general purposes of any partition under this Act; or

(d) by affixing a copy of the notice at the village office of the person to whom the notice is directed;

or, if no such village office be found, and if the notice cannot be served in any of the other modes mentioned in this section, by affixing a copy of the notice on some conspicuous place on the estate to which the notice relates.

(2) Where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, the service of a notice in any of the modes mentioned in sub-section (1), on any one of such joint applicants shall be deemed to be good and sufficient service on both or all of them.

106. If the directions of this Act are in substance and effect complied with, no proceedings thereunder, shall be affected—

Mistakes and irregularities not to vitiate proceedings.

¹See foot-note 1 on p. 127, *ante*.

[Ben. Act V

(Chapter XI.—Miscellaneous.—Secs. 107-110.)

(a) by reason of any mistake or informality unless any person has suffered, or is in danger of suffering material injury in consequence of such mistake or informality ; or

(b) by reason of the omission to publish any notification required by this Act, or to serve any notice on any person whose name is not recorded on the Collector's registers as proprietor of the estate in respect of which the notice is required by this Act to be served.

Fine in case of non-compliance with requisition.

107. If any proprietor or other person fails to comply, within the time fixed thereby by notice, with any requisition made upon him under this Act by the Collector, or Deputy Collector, the Collector or Deputy Collector, as the case may be, may impose upon him such daily fine as he may think fit, not exceeding fifty rupees ;

and such fine shall be payable daily until the requisition is complied with ;

and the Collector or Deputy Collector, as the case may be, may proceed from time to time to levy the amount which has become due in respect of any such fine :

Provided that, whenever the amount payable exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of the fine shall be made otherwise than by the authority of the Commissioner.

Fees, etc., to be recoverable as public demands.

108. Except as herein otherwise expressly provided, all fees, fines, costs and other sums ordered under this Act to be paid by any person shall be deemed to be public demands, and shall be recoverable under ¹[the Bengal Public Demands Recovery Act, 1913].

Ben. Act III of 1913.

Powers and functions of Deputy Collector may be exercised by Collector.

109. All or any powers and functions which are assigned by this Act to a Deputy Collector may be exercised and discharged by the Collector ;

and whenever it is provided by this Act that any act done or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the Collector, then if such act has been done, or such order has been made, by the Collector, it shall be deemed to have been sanctioned by the Collector or to have been confirmed by the Collector in appeal, as the case may be.

Power to vest Collector or Deputy Collector with settlement powers.

110. (1) The ²[Provincial Government] may vest any Collector or Deputy Collector with all or any of the powers which, under the provisions of any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of a parent estate.

¹These words and figure were substituted for the words and figure "the Public Demands Recovery Act, 1895" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²See foot-note 1 on p. 127, *ante*.

of 1897.]

(Chapter XI.—Miscellaneous.—Secs. 111, 112.)

(2) Such powers may be conferred either generally in respect of all estates in the partition of which the Collector or Deputy Collector may at any time and in any district be engaged, or specially in respect of any particular estate.

111. (1) An appeal, if presented within one month from the date of the order appealed against, shall lie to the Collector against every order of a Deputy Collector—

Appeals to the Collector, and admission by him of objections.

(a) directing under section 39, by whom or how the costs of an inquiry held in consequence of an objection raised shall be paid ;

(b) made under section 47, sub-section (3), declaring what entry in a record of existing rents and other assets of land shall be accepted for the purposes of the partition ;

(c) made under section 50, adopting a record of existing rents and other assets of land ;

(d) refusing, under section 51, to allow recorded proprietors to make a partition privately among themselves or by arbitration ;

(e) rejecting under section 76, sub-section (3), an application for partition according to separate possession ;

(f) directing, under section 81, sub-section (3), that a tenure or holding be split up, and that the rent thereof be apportioned ; or

(g) imposing a fine under section 107.

(2) Objections to any other orders passed by the Deputy Collector shall only be admitted by the Collector if made when he proceeds to consider a partition under section 58.

112. (1) An appeal, if presented to the Commissioner, or to the Collector for transmission to the Commissioner, within one month from the date of the order appealed against, shall lie to the Commissioner against every order of a Collector (whether such order be passed by the Collector in the first instance or in appeal from the order of a Deputy Collector)—

Appeals to the Commissioner, and admission by him of objections.

(a) rejecting an application for the partition of an estate or for the separation of a share, or putting an end to proceedings for effecting a partition or separation after the application has been admitted ;

(b) directing, under section 29, that an application for partition or separation be admitted ;

(c) directing, under section 38, that any proprietor shall pay more than his proportionate share of the cost of a partition ;

(d) made under section 50, adopting a record of existing rents and other assets of land ;

(e) refusing, under section 55, to approve a partition made by proprietors or by an arbitrator or arbitrators ;

(Chapter XI.—Miscellaneous.—Secs. 113, 114.)

(f) refusing to allow a partition to be made under section 76 in accordance with separate possession ;

(g) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition ;

(h) confirming, amending or rejecting, under section 86, an allotment made under section 84 ;

(i) made under section 88, when a dispute or doubt exists as to whether any land forms part of a parent estate ;

(j) imposing or confirming the imposition of a fine under section 107 ; or

(k) imposing any fine amounting to more than fifty rupees, or directing the payment of any costs amounting to more than fifty rupees.

(2) Objections to any other orders passed by the Collector shall only be admitted by the Commissioner if made when he proceeds to consider a partition under section 90 or section 91.

Appeals to the Board.

113. An appeal, if presented to the Board, or to the Commissioner for transmission to the Board, within six weeks from the date the order appealed against, shall lie to the Board against every order of the Commissioner---

(a) confirming, modifying or reversing any order of the Collector rejecting an application for the partition of an estate, or putting an end to proceedings for effecting a partition after the application has been admitted ;

(b) confirming, modifying or reversing any order of the Collector directing, under section 29, that an application for partition be admitted ;

(c) confirming or amending a partition as approved or made by the Collector ; or

(d) imposing, or confirming the imposition of, any fine amounting to five hundred rupees, or ordering or confirming an order directing the payment of any costs amounting to more than five hundred rupees.

Limitation of appeal ; revision by Board ; further appeal to Board.

114. (1) Except in the cases mentioned in section 113, when an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is upheld by the Commissioner, no further appeal shall lie ; but the Board, acting either on the application of the party aggrieved or of their own motion, may call for the record of the case and pass such order as they think fit.

(2) When an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is modified or reversed by the Commissioner, a further appeal shall lie to the Board in the following cases only, namely, when the order of the Collector was one—

of 1897.]

(Chapter XI.—Miscellaneous.—Secs. 115-118.)

(a) directing, under section 38, that any proprietor shall, pay more than his proportionate share of the cost of a partition, when the excess which he is ordered to pay exceeds five hundred rupees ;

(b) made under section 50, adopting a record of existing rents and other assets of land ;

(c) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition ; or

(d) confirming, amending or rejecting, under section 86, an allotment made under section 84.

115. When an appeal is presented under section 111, section 112 or section 113, or when the Board calls, under section 114, sub-section (1), for the record of a case, the proceedings shall not be stayed pending the appeal or revision unless the appellate or revising authority so directs.

Stay of proceedings pending appeal or revision.

116. (1) Any proceedings of a Deputy Collector, Collector or Commissioner connected with giving possession to the proprietors of their respective separate estates in pursuance of section 94 may be set aside or amended by the Collector, Commissioner or Board, as the case may be, provided that the revising authority shall, within three months from the date on which such possession has been given, make an order to the effect that such proceedings are under its consideration.

Revision of proceedings connected with giving possession.

(2) Every such order shall, when made by the Commissioner or the Board, be communicated to the Collector of the district, and the Collector shall cause all such orders to be published by notification.

117. The Collector, the Commissioner and the Board respectively may pass such orders as they think fit in respect of the payment of the costs of any appeal which is made to them respectively under this Act.

Orders as to costs on appeal.

118. If, in any case in which a Collector or other officer exercises jurisdiction under this Act, any person is guilty of the offence of giving or fabricating false evidence, or of forgery, as defined in the Indian Penal Code, or of abetting any of those offences, such Collector or other officer shall have the same powers in respect of such offence, and of the person charged with committing the same as are vested by the Code of Criminal Procedure, ¹[1898] in a Civil Court when any such offence is committed before or against such Court, or when a document believed to be a forgery is given in evidence in any proceedings in such Court.

Powers of officers exercising jurisdiction under this Act with regard to false evidence or forgery.

Act XLV of 1860.

Act V of 1898.

¹This figure was substituted for the figure "1882" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

(Chapter XI.—Miscellaneous.—Secs. 119-121.)

Certain orders
under this
Act not liable
to be
contested or
set aside by
civil suit.

119. No order—

(a) refusing to admit an application for partition, or to carry out a partition, on any of the grounds mentioned in section 11; or

(b) made under section 20, section 30, Chapter V, Chapter VII, Chapter VIII, Chapter IX (except section 81), Chapter X, section 107 or section 117,

shall be liable to be contested or set aside by suit in any Court, or by any means other than those expressly provided in this Act :

Provided that—

(i) any person claiming a greater interest in lands which were held in common tenancy between two or more estates than has been allotted to him by an order under section 84 or section 86; or

(ii) any person who is aggrieved by an order made under section 88,

may bring a suit in a Court of competent jurisdiction to modify or set aside such order.

120. In the execution of the duties imposed on the Board by this Act, the Board shall be guided by such orders or instructions as they may from time to time receive from the ¹[Provincial Government.]

Board to be
guided by
order or
instructions
of Provincial
Government.

121. The Board may from time to time, with the previous sanction of the ¹[Provincial Government] make rules,

Power of
Board to
make rules.

(a) prescribing, in pursuance of section 18, clause (g), particulars to be contained in applications for partition;

(b) for regulating the appointment of persons under section 35 and the scale of their remuneration, and for enabling an officer making a partition to keep himself informed of the proceedings of such persons and to exercise a proper control over them;

(c) for determining the costs of partitions;

(d) for fixing, for the purposes of section 37, the instalments in which and the times at which the cost of making partition shall be levied from proprietors;

(e) for fixing a general scale of fees for the levy of charges from proprietors of estates under partition, when ²[the keeping of an Estates Partition Account] has been directed under section 42;

(f) for fixing the instalments in which and the times at which the said fees shall be levied from proprietors;

¹See foot-note 1 on p. 127, *ante*.

²These words were substituted for the words "the formation of an Estates Partition Fund" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

of 1897.]

(Chapter XI.—Miscellaneous.—Sec. 121.)

(g) generally, for regulating the receipts, disbursements and management of any ¹[Estates Partition Account kept] under the said section 42;

(h) prescribing what entries in the record of existing rents and other assets shall be read out and, when necessary, corrected or added to, under section 47, sub-section (2);

(i) prescribing the manner in which and the period for which copies of survey papers and records of existing rents and other assets shall be published under section 48;

(j) prescribing the entries in survey papers or records of existing rents and other assets of which copies shall be furnished to landlords and tenants under the said section 48;

(k) prescribing the form of partition papers to be delivered under section 53 or prepared under section 57; and

(l) generally, for the guidance of officers in conducting partitions or making a survey and preparing a record of existing rents and other assets of land under this Act.

¹These words were substituted for the words "Estates Partition Fund formed" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

Bengal Act I of 1898.

(The Calcutta Police Act, 1898.)¹

(25th May 1898).

V of 1861. *An Act to extend certain portions of the Police Act, 1861 to the Town and Suburbs of Calcutta.*

VIII of 1895. Whereas it is expedient to extend certain portions of the Police Act, 1861 as amended by the Police Act (1861) Amendment Act, 1895, to the Town and Suburbs of Calcutta, subject to the modifications hereinafter appearing;

55 & 56 Vict. c. 14. And whereas, the said Acts having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Calcutta Police Act, 1898; Short title.

(2) (*Commencement*). *Rep. by the Amending Act, 1903 (1 of 1903).*

V of 1861. 2. The portions of the Police Act, 1861 as amended by the Police Act (1861) Amendment Act, 1895, which are specified in the first column of the schedule to this Act are hereby extended, subject to the modifications set forth in the second column of that schedule, to— Extension of portions of the Police Act, 1861, to the Town and Suburbs of Calcutta.

Ben. Act IV of 1866. (1) the town of Calcutta, as defined in section 3 of the Calcutta Police Act, 1866, and

(2) the area to which ²[the Calcutta Suburban Police Act, 1866] for the time being applies by virtue of any notification published under section 1 thereof.

¹ LEGISLATIVE PAPERS—For Statement of Objects and Reasons, *see Calcutta Gazette*, 1898, Part IV, p. 533; for Report of Select Committee, *see ibid.*, p. 537; and for Proceedings in Council, *see ibid.*, Supplement, pp. 533, 689, 708, 1007, 1014 and 1025.

LOCAL EXTENT—This Act extends to the Town and Suburbs of Calcutta—*see* section 2.

²These words and figure were substituted for the certain words by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)

(The Schedule.)

THE SCHEDULE.

Portions of the Police Act, 1861, extended.	Modifications.	Y of 1861.
1	2	
So much of section 1 as— (a) defines “property,” “person,” and “month” and 1 * *		
Section 15 ..	In sub-section (1) after “them” insert “or of any persons resorting to such area.” In sub-section (2), for “The Inspector- General of Police or other officer authorized by the [Provincial Gov- ernment] in this behalf” read “the Commissioner of Police.” In sub-section (4), for “The Magistrate of the district” read “Such officer as the [Provincial Government] may appoint in this behalf, or, in the suburbs the Magistrate of the 24-Parganas,” and for “the Magis- trate’s” read “such officer’s or Magistrate’s.”	
Section 15A ..	In sub-section (1), after “them” insert “or of any persons resorting to such area;” omit the words “being an inhabitant of such area;” and for “the Magistrate of the district or of the sub-division of a district within which such area is situated” read “the officer appointed under section 15, sub-section (4), or, in the suburbs, the Magistrate of the 24-Parganas.” In sub-section (2) for “the Magis- trate of the district” read “the officer ap- pointed as aforesaid, or, in the suburbs, the Magistrate of the 24-Parganas;” and for clause (c) read:— “(c) assess the proportion in which the same shall be paid:— (i) by the inhabitants of the area specified in the procla- mation (other than the applicant), or	

¹The entry “(b) relates to number and gender” which was repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), is omitted.

²These words were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws), Order, 1937.

of 1898.]

V of 1861.	Portions of the Police Act, 1861, extended.	Modifications.
1	2	
		<p>(ii) by the inhabitants of the area of which the persons resorting as aforesaid are inhabitants, or</p> <p>(iii) by the inhabitants of both the said areas, who shall not have been exempted from liability to pay under the next succeeding sub-section.</p> <p>In the proviso to sub-section (2), <i>before</i> "Magistrate" <i>insert</i> "said officer or," and <i>for</i> "such area" <i>read</i> "the area specified in the proclamation."</p> <p>In sub-section (4), <i>for</i> "the Magistrate of the district" <i>read</i> "the officer appointed as aforesaid or the Magistrate of the 24-Parganas."</p>
Section 16	..	<p>In sub-section (1), <i>for</i> "sections 13, 14 and 15A" <i>read</i> "sections 15 and 15A."</p> <p>In sub-sections (1) and (3), <i>for</i> "the Magistrate of the district" <i>read</i> "the officer appointed under section 15, sub-section (4), or the Magistrate of the 24-Parganas, as the case may be."</p> <p>In sub-section (1), <i>for</i> "in the manner provided by sections 386 and 387 of the Code of Criminal Procedure, 1882, for the recovery of fines" <i>read</i> "under the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and execution of warrants for the levy of fines."</p> <p>In sub-section (2), <i>for</i> "All moneys paid or recovered under sections 13, 14 and 15 shall be credited to a fund to be called 'the General Police Fund' and" <i>read</i> "All moneys paid or recovered under section 15."</p> <p>In sub-section (3), <i>for</i> "that section" <i>read</i> "the said section 15A."</p>
Section 46, sub-sections (2) and (3).		<p>In sub-section (2), <i>omit</i> the words "When the whole or any part of this Act shall have been so extended."</p> <p>In clause (a) of sub-section (2), <i>for</i> "Magistrate" <i>read</i> "the officer appointed under section 15, sub-section (4), the Magistrate."</p>

Bengal Act III of 1898.

[The Bengal Tenancy (Amendment) Act, 1898).¹

(2nd November 1898.)

An Act to amend sections 30, 31, 39, 52 and 119 and Chapter X of the Bengal Tenancy Act, 1885.

Whereas it is expedient to amend sections 30, 31, 39, 52 and 119 and Chapter X of the Bengal Tenancy Act, 1885, in the manner hereinafter appearing: VIII of 1885.

And whereas, the said Act having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained under section 5 of the Indian Councils Act, 1892, to the requisite amendments being made by an Act of the Lieutenant-Governor of Bengal in Council; 55 & 56 Vict, c. 14

And whereas the sanction of the Governor General has similarly been obtained to the amendment of the Court-fees Act, 1870, which is proposed by section 7 (105) of this Act; VII of 1870.

It is hereby enacted as follows:—

Short title.

1. (1) This Act may be called the Bengal Tenancy (Amendment) Act, 1898;

(Commencement). *Rep. by the Amending Act, 1903 (1 of 1903).*

2 to 7. [Amendments Incorporated in Act VIII of 1885.]

Validation of publication of past records.

8. All records published under section 105 of the Bengal Tenancy Act, 1885, before the commencement of this Act, whether in draft or final form shall be deemed to have been duly published.

Effect of settlements of rent and decisions by Revenue-officers made before the commencement of this Act.

9. (1) Every settlement of rent or decision of a dispute by a Revenue-officer under section 104 or section 106 of the Bengal Tenancy Act, 1885, before the commencement of this in respect of which no appeal has, before the commencement of this Act, been preferred to the Special Judge appointed under section 108 of that Act, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final :

¹LEGISLATIVE PAPERS.—For Statements of Objects and Reasons, *see Calcutta Gazette*, 1897, Pt. IV, p. 107; for Report of Select Committee, *see ibid*, 1898, Pt. IV, p. 515; and for Proceedings in Council, *see ibid*, 1897, Supplement, pp. 1213, 1688, *ibid*, 1898, Supplement, pp. 529, 670 and 762.

LOCAL EXTENT.—Since this Act merely amends the Bengal Tenancy Act, 1885 (VIII of 1885), its local extent must be taken to be the same as that of the latter Act.

The application of this Act is barred in the Chittagong Hill tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4(2).

[Ben. Act III of 1898.]

(Secs. 10, 11.)

Provided that an appeal shall lie to the District Judge from any such settlement or decision which was made or given within thirty days before the commencement of this Act, if the appeal be presented within thirty days from the date of such settlement or decision.

(2) The provisions of the Code of Civil Procedure¹ relating to appeals shall, as nearly as may be, apply to all such appeals. Act XIV of 1882.

10. [Amendments incorporated in Act VIII of 1885.]

11. (*Repeal of Bengal Act V, 1894*). Rep. by the *Amending Act, 1903 (1 of 1903)*.

¹Act XIV of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (Act V of 1908), and this reference should now be taken to be made to that Code— *scr. s.* 158, thereof.

Bengal Act I of 1899.

(The Bengal General Clauses Act, 1899.)

CONTENTS.

PRELIMINARY.

SECTION.

1. Short title.
2. (*Repealed*).

GENERAL DEFINITION.

3. Definitions.
4. Application of certain of the foregoing definitions to previous Bengal Acts.
5. Continuance of certain definitions for purposes of previous Bengal Acts.

GENERAL RULES OF CONSTRUCTION.

6. Coming into operation of Bengal Acts.
7. Printing of date on which Act is published after having received the assent of the Governor, Governor General or His Majesty.
8. Effect of repeal.
9. Revival of repealed enactments.
10. Construction of references to repealed enactments.
11. Commencement and termination of time.
12. Computation of time.
13. Measurement of distances.
14. Gender and number.

POWERS AND FUNCTIONARIES.

15. Powers conferred on the Government to be exercisable from time to time.
16. Power to appoint to include power to appoint *ex officio*.
17. Power to appoint to include power to suspend or dismiss.
18. Substitution of functionaries.
19. Successors.
20. Official chiefs and subordinates.

PROVISIONS AS TO ORDERS, RULES, ETC., MADE UNDER ENACTMENTS.

21. Construction of orders, etc., issued under Bengal Acts.
22. Power to make, to include power to add to, amend, vary or rescind, orders, etc.
23. Making of rules or by-laws and issuing of orders between publication and commencement of Bengal Act.
24. Provisions applicable to making of rules or by-laws after previous publication.
25. Continuation of orders, etc., issued under enactments repealed and re-enacted.

MISCELLANEOUS.

26. Recovery of fines.
27. Provision as to offences punishable under two or more enactments.
28. Meaning of service by post.
29. Citation of enactments.
30. Saving for previous Acts, rules and by-laws.
31. Application to Eastern Bengal and Assam Acts and Ordinances and Regulations under the Government of India Act, 1935.

Bengal Act I of 1899.

(The Bengal General Clauses Act, 1899).¹

(18th January 1899.)

An Act for further shortening the language used in Bengal Acts, and for other purposes.

Whereas it is expedient further to shorten the language used in Bengal Acts, and to make certain other provisions relating to those Acts ;

It is hereby enacted as follows :

PRELIMINARY.

1. This Act may be called the Bengal General Clauses Act, 1899. Short title.

2. [Repeal of Bengal Act V of 1867.] Rep. by the Amending Act, 1903 (1 of 1903).

GENERAL DEFINITIONS.

3. In this Act, and in all Bengal Acts made after the commencement of this Act² unless there is anything repugnant in the subject or context,— Definitions.

(1) “ abet ”, with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code ; “ Abet.”

(2) “ act,” used with reference to an offence or a civil wrong, shall include a series of acts ; and words which refer to acts done shall extend also to illegal omissions ; “ Act.”

(3) “ affidavit ” shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing ; “ Affidavit.”

(4) “ barrister ” shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland ; “ Barrister.”

3* * * *

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1898, Pt. IV, p. 570, and for Proceedings in Council, see *ibid*, Supplement, pp. 1426, 1428, 1579 and 2538.

LOCAL EXTENT.—Since this Act has no “ local extent ” clause, it must be taken originally to have extended to the whole of the former Province of Bengal, including the de-regulationised tracts.

²Some of the definitions in this section apply to also to Bengal Acts made between the 1st June, 1867, and the commencement of the present Act—see s. 4. For two further definitions applying to such Acts, see s. 5.

³Clause (5) was omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(General Definitions.—Sec. 3.)

- “Bengal Act.” (6) “Bengal Act” shall mean an Act made by the Lieutenant-Governor of Bengal in Council under ^{24 & 25} [the Indian Councils Act, 1861, or] the Indian ^{Vict., c. 67,} Councils Acts, 1861 and 1892 ^{55 & 56} [or the Indian ^{Vict.,} Councils Acts, 1861, 1892 and 1909, or made by the ^{c. 14.} Governor in Council of Fort William in Bengal under the Indian Councils Acts, 1861, 1892 and 1909] ³[or the Government of India Act, 1915, or by the Local Legislature or the Governor of Bengal under the Government of India Act, or by the Provincial Legislature or the Governor of Bengal under the Government of India Act, 1935.]
- “Chapter.” (7) ‘Chapter’ shall mean a Chapter of the Act in which the word occurs ;
- “Collector.” (8) ‘Collector’ shall mean, in Calcutta, the Collector of Calcutta, and elsewhere the chief officer in charge of the revenue administration of a district ;
- “Commencement.” ⁴(9) “commencement,” used with reference to an Act, shall mean the day on which the Act comes into force ;
- “Commissioner.” (10) “Commissioner” shall mean the chief officer in charge of the revenue administration of a division ;
- “Consular officer.” (11) “Consular officer” shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent ;
- “District Judge.” (12) “District Judge” shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction ;
- “Document.” (13) “document” shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, which is intended to be used or which may be used, for the purpose of recording that matter ;
- “Enactment.” (14) “enactment” shall include a Regulation (as herein-after defined) and any Regulation of the Bengal Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid ;

¹These words and figure were inserted by the Amending Act, 1903 (1 of 1903).

²These words and figures were added by Sch. III of the Bengal Laws Act, 1914 (Ben. Act I of 1914).

³These words and figures were inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴As to when the Act comes into force, see s. 6.

of 1899.]

(General Definitions.—Sec. 3.)

- (15) "father," in the case of anyone whose personal law permits adoption, shall include an adoptive father ; "Father."
- (16) "financial year" shall mean the year commencing on the first day of April ; "Financial year."
- (17) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not ; "Good-faith."
- (18) "Government" or "the Government" shall include the ¹[Provincial Government] as well as the ²[Central Government] ; "Govern- ment."

3 * * *

- (20) "Her Majesty" or "the Queen" shall include her successors ; "Her Majesty" or "the Queen."
- (21) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth ; "Immovable property."
- (22) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code ; "Imprison- ment."
- (23) "local authority" shall mean a Municipal Com- mittee, District Board, body of Port Commis- sioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund ; "Local authority."

3* * *

- (25) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure⁴ for the time being in force ; "Magistrate."
- (26) "master," used with reference to a ship, shall mean any person (except a pilot or harbour-master) hav- ing for the time being control or charge of the ship ; "Master" (of a ship).
- (27) "month" shall mean a month reckoned according to the British calendar ; "Month."
- (28) "movable property" shall mean property of every description, except immovable property ; "Movable property."

Act XLV
of 1860.

Act V of
1898.

¹These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Government of India," *ibid.*

³Clauses (19) and (24) were omitted by Sch. IV, *ibid.*

⁴The Code now in force is Act V of 1898.

(General Definitions.—Sec. 3.)

"Oath."	(29) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing ;	
"Offence."	(30) "offence" shall mean any act or omission made punishable by any law for the time being in force ;	
"Part."	(31) "Part" shall mean a part of the Act in which the word occurs ;	
"Person."	(32) "person" shall include any company or association or body of individuals, whether incorporated or not ;	
"Public nuisance."	(33) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code ;	Act XLV of 1860.
"Registered."	(34) "registered," used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents ;	XVI of 1908.
"Regulation."	(35) "Regulation" shall mean a Regulation made under the Government of India Act, 1870 ;	33 & 34 Vict. c. 3.
"Rule."	(36) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment ;	
"Schedule."	(37) "Schedule" shall mean a schedule to the Act in which the word occurs ;	
"Scheduled District."	(38) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874 ;	XIV of 1874.
"Section."	(39) "section" shall mean a section of the Act in which the word occurs ;	
"Ship."	(40) "ship" shall include every description of vessel used in navigation not exclusively propelled by oars ;	
"Sign."	(41) "sign," with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions ;	
"Son."	(42) "son," in the case of anyone whose personal law permits adoption, shall include an adopted son ;	
"Sub-section."	(43) "sub-section" shall mean a sub-section of the section in which the word occurs ;	
"Swear."	(44) "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing ;	

of 1899.]

(General Definitions General Rules of Construction—

Secs. 4-6.)

- (45) "vessel" shall include any ship or boat or any other "Vessel." description of vessel used in navigation ;
- (46) "will" shall include a codicil and every writing "Will." making a voluntary posthumous disposition of property ;
- (47) expressions referring to "writing" shall be cons- "Writing." trued as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form ; and
- (48) "year" shall mean a year reckoned according to the "Year." British calendar.

4. The definitions in section 3 of the following words that is to say, "affidavit," "Magistrate," "month," "oath," and "swear," apply also, unless there is anything repugnant in the subject or context, to all Bengal Acts made between the first day of June, 1867, and the commencement of this Act. Application of certain of the foregoing definitions to previous Bengal Acts.

5. In all Bengal Acts made between the first day of June, 1867, and the commencement of this Act, unless there is anything repugnant in the subject or context,— Continuance of certain definitions for purposes of previous Bengal Acts.

- (1) "land" includes houses and buildings and corporeal hereditaments and tenements of any tenure, unless where there are words to exclude houses and buildings or to restrict the meaning to tenements of some particular tenure ; and
- (2) "person" includes any incorporated company or incorporated association of persons.

GENERAL RULES OF CONSTRUCTION.

6. ¹(1) Where any Bengal Act is not expressed to come into operation on a particular day, then it shall come into operation, if it is an Act of the Legislature, on the day on which the assent thereto of the Governor, the Governor-General, or His Majesty, as the case may require, is first published in the *Official Gazette*, and, if it is an Act of the Governor, on the day on which it is first published as an Act in the *Official Gazette*. Coming into operation of Bengal Acts.

¹Sub-section (1) was substituted for the original sub-section (1) by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(General Rules of Construction.—Secs. 7-9.)

(2) Unless the contrary is expressed, a Bengal Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

7. In this Act, and in every Bengal Act made after the commencement of this Act, the date of such publication as is mentioned in section 6, ¹* * shall be printed above the title of the Act, and shall form part of the Act.

8. Where this Act, or any Bengal Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect ; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or
- (e) affect any investigation, legal proceeding or remedy, in respect of any such right, privilege, obligation liability, penalty, forfeiture or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

9. (1) In any Bengal Act made after the commencement of this Act it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all Bengal Acts made between the first day of June, 1867, and the commencement of this Act.

¹The word and figure "sub-section (1)" were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Printing of
date on which
Act is pub-
lished after
having receiv-
ed the assent
of the Governor,
Governor-
General
or His Majesty.

Effect of
repeal.

Revival of
repealed
enactments.

of 1899.]

(General Rules of Construction.—Powers and Functions.—Secs. 10-16.)

10. Where this Act, or any Bengal Act made after the commencement of this Act, repeals and re-enacts with or without modifications, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Construction of references to repealed enactments.

11. In any Bengal Act made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from," and, for the purpose of including the last in a series of days on any other period of time, to use the word "to."

Commencement and termination of time.

12. Where, by any Bengal Act, made after the commencement of this Act, any Act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open :

Computation of time.

IX of 1908. Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, [1908], applies.

13. In the measurement of any distance for the purposes of any Bengal Act made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Measurement of distances.

14. In all Bengal Acts, unless there is anything repugnant in the subject or context,—

Gender and number.

(1) words importing the masculine gender shall be taken to include females ; and

(2) words in the singular shall include the plural, and vice versa.

POWERS AND FUNCTIONARIES.

15. Where, by any Bengal Act made after the commencement of this Act, any power is conferred on the Government, then that power may be exercised from time to time as occasion requires.

Powers conferred on the Government to be exercisable from time to time.

16. Where, by any Bengal Act, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

Power to appoint to include power to appoint *ex-officio*.

¹This figure was substituted for the figure "1877" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

[Ben. Act I

(Powers and Functionaries.—Provisions as to Orders, Rules, etc., made under Enactments.—Secs. 17-22.)

Power to appoint to include power to suspend or dismiss.

17. Where, by any Bengal Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

Substitution of functionaries.

18. In any Bengal Act made after the commencement of this Act it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

Successors.

19. In any Bengal Act made after the commencement of this Act it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

Official chiefs and subordinates.

20. In any Bengal Act made after the commencement of this Act it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

PROVISIONS AS TO ORDERS, RULES, ETC., MADE UNDER ENACTMENTS.

Construction of orders, etc., issued under Bengal Acts.

21. Where, by any Bengal Act, a power to issue any order, scheme, rule, by-law, notification or form is conferred, then expressions used in the order, scheme, rule, by-law, notification or form, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act conferring the power.

Power to make, to include power to add to, amend, vary or rescind, orders, etc.

22. Where, by any Bengal Act, a power to make orders, rules, by-laws or notifications is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any orders, rules, by-laws or notifications so made.

of 1899.]

Provisions as to Orders, Rules, etc., made under Enactments.—
Secs. 23, 24.)

23. Where, by any Bengal Act which is not to come into operation [immediately on the passing thereof], a power is conferred to make rules or by-laws, or to issue orders with respect to the application of the Act, or with respect to the establishment of any Court or office, or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act,

Making of rules or by-laws and issuing of orders between publication and commencement of Bengal Act.

then that power may be exercised at any time ²[after the passing of the Act], but rules, by-laws or orders so made or issued shall not take effect till the commencement of the Act.

24. Where, by any Bengal Act, a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely—

Provisions applicable to making of rules or by-laws after previous publication.

- (1) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby ;
- (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the ³[Central Government or, as the case may be, the Provincial Government] prescribes ;
- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration ;
- (4) the authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified ;

¹These words were substituted for the words "on the day on which it is first published in the *Calcutta Gazette* after having received the assent of the Governor General" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "after the Act has been published as aforesaid", *ibid.*

³These words were substituted for the words "Local Government", *ibid.*

[Ben. Act I

(Provisions as to Orders, Rules, etc., made under Enactments.—Miscellaneous.—Secs. 25-28.)

- (5) the publication in the ¹[*Official Gazette*] of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

Continuation of orders, etc., issued under enactments repealed and re-enacted.

25. Where any enactment is, after the commencement of this Act, repealed and re-enacted by a Bengal Act with or without modification, then, unless it is otherwise expressly provided, any ²[appointment], order, scheme, rule, by-law, notification or form ³[made or] issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been ³[made or] issued under the provisions so re-enacted, unless and until it is superseded by any ²[appointment], order, scheme, rule, by-law, notification or form ³[made or] issued under the provisions so re-enacted.

MISCELLANEOUS.

Recovery of fines.

26. Sections 63 to 70 of the Indian Penal Code, and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Bengal Act or any rule or by-law made under any Bengal Act, unless the Act, rule or by-law contains an express provision to the contrary.

Act XLV of 1860.

Act V of 1898.

Povision as to offences punishable under two or more enactments.

27. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Meaning of service by post.

28. Where any Bengal Act made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

¹These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (1), of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This word was inserted by the Amending Act, 1903 (I of 1903).

³These words were inserted, *ibid*.

of 1899.]

(*Miscellaneous.—Secs. 29-31.*)

29. (1) In any Bengal Act, and in any rule, by-law, instrument or document made under, or with reference to any Bengal Act, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or subsection of the enactment in which the provision is contained.

Citation of enactments.

(2) In this Act, and in any Bengal Act made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

30. Where any Act, rule or by-law made after the commencement of this Act continues or amends any Acts, rules or by-laws made before the commencement of this Act, the foregoing sections of this Act shall not by reason merely of such continuance or amendment affect the construction of such Acts rules or by-laws.

Saving for previous Acts, rules and by-laws.

31. The provisions of this Act shall apply in relation to any Eastern Bengal and Assam Act as in force in Bengal and any Regulation made by the Governor of Bengal under section 92 of the Government of India Act, 1935, as they apply in relation to Bengal Acts other than Acts made by the Governor of Bengal under section 90 of the said Act, and shall apply in relation to any Ordinance promulgated by the Governor under section 88 or section 89 of the said Act, as they apply in relation to Acts made by the Governor under the said section 90.

Application to Eastern Bengal and Assam Acts and Ordinances and Regulations under the Government of India Act, 1935.

26 Geo.
V., C. 2.

¹Section 31 was inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act II of 1899.

(The Bengal Civil Court Amins Act, 1899)¹.

(25th October 1899.)

An Act to repeal Civil Courts Amins Act, 1856, in Bengal.

XII of
1856.

Whereas it is expedient to repeal the Civil Courts Amins Act, 1856, so far as it applies to Bengal :

It is hereby enacted as follows :—

1. The Civil Courts Amins Act, 1856 is hereby repealed throughout Bengal : Repeal of Act
XII of 1856.

Provided as follows :—

- (a) this repeal shall not affect any appointment already made under the said Act, and
- (b) the persons holding such appointments shall perform such duties as may be required of them by the District Judge.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1899, Pt. IV, p. 613 ; and for Proceedings in Council, see *ibid*, 1899, Supplement, pp. 1560, 1907 ; *ibid*, January, 1900, Special Supplement, pp. 140 and 251.

LOCAL EXTENT.—This Act is expressed to apply to the whole of the former Province of Bengal, but its application is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900) s. 4 (2).

Bengal Act IV of 1900.

[The Calcutta Tramways (Electric Traction) Act, 1900]¹

(22nd August 1900.)

An Act to give effect to an agreement made on the 9th December, 1899, between the Corporation of Calcutta and the Calcutta Tramways Company, Limited.

Whereas an agreement, a copy whereof is set forth in the schedule to this Act, was made between the Corporation of Calcutta and the Calcutta Tramways Company, Limited, on the 9th December, 1899 :

And whereas it is declared in the said agreement that the same shall be subject to sanction and authorization by an Act of the Bengal Legislative Council to be thereafter passed for the purpose :

And whereas it is expedient that such sanction and authorization should be given :

It is hereby enacted as follows :—

1. This Act may be called the Calcutta Tramways (Electric Traction) Act, 1900. Short title.

2. The agreement, a copy whereof is set forth in the schedule to this Act, is hereby sanctioned and authorized ; Sanction to the agreement.

and the concessions or contracts, dated respectively the 2nd October, 1879, and the 22nd November, 1879, and the agreement of the 2nd September, 1893, in such agreement mentioned, and the Calcutta Tramways Act, 1880, and the Calcutta Tramways Act, 1894, shall, so far as may be necessary to validate and give effect to such agreement, be extended, varied or modified.

Ben. Act
I of 1880.
Ben. Act
III of
1894.

THE SCHEDULE.

Agreement, dated 9th December, 1899, between the Corporation of Calcutta and the Calcutta Tramways Company, Limited.

ARTICLES of agreement made this ninth day of December, 1899, BETWEEN THE CORPORATION OF CALCUTTA constituted by and under the Calcutta Municipal Consolidation Act, 1888² of the Bengal Legislative Council, hereinafter called the

Ben. Act
II of
1888.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons see *Calcutta Gazette*, 1900, Pt. IV, p. 64; and for Proceedings in Council, see *ibid*, Pt. IVA, pp. 7 and 14.

LOCAL EXTENT.—Since this Act merely supplements the Calcutta Tramways Act, 1880 (Ben. Act I of 1880), it has the same local extent as that Act.

²Ben. Act II of 1888 was repealed and re-enacted by Ben. Act III of 1899 which again has been repealed and re-enacted by the Calcutta Municipal Act, 1923. (Ben. Act III of 1923).

(The Schedule).

Corporation of the one part, and THE CALCUTTA TRAMWAYS COMPANY, LIMITED, a Company incorporated under the English Companies' Acts, having its registered office at 11, Abchurch Lane, London, hereinafter called the Company, of the other part.

Whereas, by two Concessions or Contracts the first thereof being dated the 2nd October, 1879, and made between the Corporation of the town of Calcutta constituted by and under Act IV of 1876¹ of the Bengal Legislative Council of the one part and Dillwyn Parrish, Alfred Parrish and Robinson Souttar, in such Concession or Contract described and therein and hereinafter referred to as the grantees, of the other part, and the second Concession or Contract being dated the 22nd November, 1879, and made between the Chairman of the Municipal Commissioners of the Suburbs of Calcutta, a body created and rendered corporate by Act V of 1876² of the Bengal Legislative Council, of the one part, and the said Dillwyn Parrish, Alfred Parrish and Robinson Souttar as grantees, of the other part, which Concessions or Contracts respectively received the sanction of the Lieutenant-Governor of Bengal and were further sanctioned by an Act of the Bengal Legislative Council entitled the Calcutta Tramways Act, 1880, the grantees, their heirs, executors, administrators and assigns were authorized to construct, maintain and use, in the manner, upon the terms and subject to the conditions and provisions in the said Concessions or Contracts respectively expressed and contained, certain lines of tramway therein respectively referred to in Calcutta and the Suburbs thereof respectively, and were also entitled, subject to the conditions and provisions in the said Concessions or Contracts respectively expressed and contained, to the exclusive right of laying and constructing, maintaining and using a tramway or tramways within the limits of the Calcutta Municipality and of laying, constructing, maintaining and using a tramway or tramways within the limits of the Calcutta Suburban Municipality ;

And whereas the Corporation are, under and by virtue of Act II of 1888³ of the Bengal Legislative Council, the successors of the Corporation of the Town of Calcutta, parties of the first part to the said Concession or Contract of 2nd October, 1879, and of the Chairman of the Municipal Commissioners of the Suburbs of Calcutta, party of the first part to the said

Ben. Act
I of 1880.

¹Ben. Act IV of 1876 was repealed and re-enacted by Ben. Act II of 1888, which was repealed and re-enacted by Ben. Act III of 1899, which again has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

²Ben. Act V of 1876 was repealed and re-enacted by Ben. Act III of 1884, which again has been repealed and re-enacted by the Bengal Municipal Act, 1932 (Ben. Act XV of 1932).

³See foot-note 2 on p. 179, *ante*.

of 1900.]

(*The Schedule*).

Concession or Contract of the 22nd November, 1879 and the Company are the assignees of the grantees, parties of the second part to the said Concessions or Contracts of the 2nd October, 1879, and 22nd November, 1879, respectively. AND WHEREAS, by the said Concession or Contract of the 2nd October, 1879, it was agreed that in consideration of such Concession the grantees would pay rent at the several rates therein specified for the several periods in the said Concession or Contract mentioned ;

AND WHEREAS it was by the said Concession or Contract of the 2nd October, 1879, further agreed and provided that the Corporation of the town of Calcutta and their successors should have the right of purchasing the said tramways, with the plant, buildings, stores, rolling-stock and everything connected therewith upon the expiration of twenty-one years from the commencement of the said Concession or Contract, upon declaring their intention so to do in writing not less than six months before the expiration of the said twenty-one years, and should have a renewed right of purchase at the end of every seven years after the expiration of the said twenty-one years upon similar notice being given, and the consideration for such purchase should be a cash payment of one and two-fifths of the amount of the invested capital of the said grantees or securities of the Government of India or securities the interest whereon should be guaranteed by the Secretary of State for India in Council or debentures of the said Corporation of such amount as to produce, at the rate of interest current on such securities, 7 per cent. per annum on the amount of the said invested capital, and, if the consideration for such purchase should be given in such securities as aforesaid, the grantees should be entitled to have in addition a first mortgage of all the property, assets and profits of the tramway or tramways which should have been purchased from them ;

AND WHEREAS, by an agreement bearing date the 2nd day of September, 1893, and made between the Corporation of the one part and the Company of the other part, such agreement being sanctioned by Act III of 1894¹ of the Bengal Legislative Council, after reciting *inter alia* that under and by virtue of the 17th Clause of the said Concession or Contract of the 2nd day of October, 1879, the rent then payable by the said Calcutta Tramways Company, Limited, to the said Corporation of Calcutta was calculated at the rate of Rs. 3,250 per annum per mile of double line and Rs. 2,250 per annum per mile of single line, it was in reference thereto agreed that the rent payable by the said Company to the Corporation from the 1st January, 1894, to the 31st December, 1900, being the end of the 21st year referred to in the said Concession or Contract of the 2nd October, 1879, should

¹The Calcutta Tramways Act, 1894.

(*The Schedule*).

be calculated and paid at the said rate of Rs. 3,250 *per annum* per mile of double line and Rs. 2,250 *per annum* per mile of single line, anything in the said Concession or Contract of the 2nd October, 1879, to the contrary notwithstanding, and the said agreement contained a proviso, which has since become inoperative, that a remission of Rs. 15,000 a year should be granted for five years with effect from 1894 subject to the condition that the dividends declared by the Company should not exceed $3\frac{1}{2}$ *per cent.* *per annum* during that period :

AND WHEREAS the said Company some time since proposed to the Corporation to substitute electric traction for horse-power traction heretofore employed in the working of the tramways approved of by the Corporation and constructed and maintained by the Company, and to make such alterations in the construction of the said tramways as might be necessary to render the lines suitable to the adoption of such substituted traction, to which proposal the said Corporation assented ;

AND WHEREAS the said Company have, with the assent of the said Corporation, already effected the necessary alteration in the construction of portions of the said tramways ;

AND WHEREAS the parties hereto have deemed it expedient and have mutually agreed, subject to the sanction and authorization of this agreement by an Act of the Bengal Legislative Council, that the said Concessions or Contracts of the 2nd October, 1879, and of the 22nd November, 1879, and the said agreement of the 2nd September, 1893, shall be varied or modified to the extent and in the manner hereinafter appearing ;

NOW THESE PRESENTS WITNESS that, subject to the sanction and authorization thereof by an Act of the Bengal Legislative Council to be hereafter passed for the purpose, and in consideration of the said mutual agreement and of the covenants hereinafter contained and on the part of the said Corporation and of the said Company, respectively, to be observed and performed, the Corporation do hereby covenant with the Company and its assigns, and the Company for itself and its assigns doth hereby covenant with the Corporation, in manner following, that is to say :—

1. Preparatory to the introduction of the system of electric traction hereinafter mentioned, the Company will in a good and substantial manner alter and re-construct the several tramways in Calcutta constructed and now maintained by the Company and specified in the schedule hereto, and all other tramways in Calcutta now maintained by the Company other than the tramways specified in the said schedule, by removing therefrom the rails of the pattern and weight hitherto laid and maintained by the Company in connection with and for the purposes of the system of

The Calcutta Tramways (Electric Traction) Act, 1900. 183
of 1900.]

(The Schedule.)

horse-power traction at present employed in working the said tramways, and by substituting for such rails in the existing gauge rails of such pattern and weight as shall in the opinion of the Engineer to the Corporation be suitable for electric traction.

2. The Company will execute and completely finish the work of alteration and re-construction of the said tramways, as to those specified in the schedule hereto by the 31st December, 1899, and will execute and completely finish the work of alteration and re-construction of the said tramways, other than those so specified in the said schedule, with all reasonable and proper despatch.

3. The Company will, within the period of three years from the date of this agreement, introduce and provide throughout the whole of the tramways of the Company a system of electric traction by means of overhead wires and of a description approved and accepted by the Corporation, in substitution for the existing system of horse-power traction, and will within the period aforesaid furnish and fully and efficiently equip the said tramways with all plant and machinery necessary for the purpose and render the said system of electric traction so to be substituted sufficient and complete in all details as a working system, and, having so introduced and provided the said system of electric traction and so furnished and fully and efficiently equipped the said tramways, will give notice in writing of the completion of the said system to the Corporation. The said system of electric traction shall be completed to the satisfaction in all respects of the Engineer to the Corporation, and, on the Engineer to the Corporation satisfying himself that the said system of electric traction is complete, efficient and in good working order and safe for public service and that the tramways and tramcars are in proper condition, he shall grant a certificate to that effect to the said Company, and from the date of the said certificate the said Company shall work the said system of electric traction.

4. If the Company shall not within the said period of three years from the date of this agreement complete the said system of electric traction in all details to the satisfaction of the Engineer to the Corporation, the Company shall be liable to and shall for such failure pay to the Corporation a penalty or fine of Rs. 200 for each day or part of a day until the said system of electric traction shall be completed in all details to the satisfaction of the said Engineer. The said penalty or fine shall be paid by the Company on demand therefor being made by or on behalf of the Corporation, and in the event of non-payment thereof shall be recoverable in full from the Company. If the Engineer to the Corporation shall decide that any work or thing to be done or provided under this agreement is not to his satisfaction, and the Company shall take objection to such decision as being unreasonable, the question shall be referred to and settled by arbitration

(The Schedule.)

in the manner provided by the said Concession or Contract of the 2nd October, 1879.

5. The Corporation shall have the right of purchasing the said tramways with the plant, machinery, land, buildings, rolling-stock, stores and everything connected therewith belonging to the Company, on the 1st January, 1931, upon declaring their intention so to purchase the same in writing not less than six calendar months before the said date, and the Corporation shall have a renewed right of purchase at the end of every seven years after the said 1st January, 1931, upon similar notice being given. The consideration for such purchase shall be a cash payment of twenty-five times the difference between the average gross annual receipts and the working expenses of the Company which said working expenses shall *inter alia* include track-rent and the proper up-keep and maintenance of the said tramways, plant, machinery, buildings and rolling-stock, and any sum payable under clause 6. The average of the gross annual receipts and the working expenses for the purposes of such purchase shall be determined by taking the average of the seven years immediately preceding the date of such purchase. Upon the expiry of the said notice, the Company shall make over to the Corporation the entire tramways, plant, machinery, land, buildings, rolling-stock, stores and everything connected therewith. If the payment by the Corporation of the consideration for such purchase shall be delayed beyond the period of thirty days from the date of the expiration of the notice so to be given, the Corporation will pay to the Company interest on the amount of such consideration or such part thereof as shall be unpaid at the rate of 5 *per cent. per annum* from the date of the expiration of such notice, until payment, but in no event shall the said consideration be allowed to remain unpaid for more than six months from the date on which the same shall become due and payable. The provisions of this clause shall be in lieu of and not in addition to any power of purchase now vested in the corporation under the said Concessions or Contracts of the 2nd October, 1879, and the 22nd November, 1879, or either of them, or the Calcutta Tramways Act, 1880, or otherwise.

Ben. Act
I of 1880.

6. The Company will, prior to the date of the expiration of the notice to be given by the Corporation under and pursuant to the last preceding clause, well and sufficiently repair to the satisfaction of the Engineer to the Corporation such of the said tramways and of the said plant, machinery, buildings, rolling-stock and other things or such portions thereof, respectively, as shall then be in need of repair, and will place or restore the same in or to a good and serviceable order and condition, and will so make over the same to the Corporation. If default shall be made by the Company in complying with the provisions of this clause, the Corporation shall for such default, and to the extent thereof, be entitled to a deduction

of 1900.]

(The Schedule.)

from the consideration for the purchase of the said tramways, plant, machinery, land, buildings, rolling-stock, stores and premises of the Company as aforesaid, the fact whether such default has occurred and the amount of such deduction to be determined by arbitration in the manner provided in the said Concession or Contract of the 2nd October, 1879.

7. Until such date as the Company shall have completed the said system of electric traction in all respects to the satisfaction of the Engineer to the Corporation, the Company will pay to the Corporation track-rent at the rate at which the same is now paid or may be payable by the Company under the said Concessions or Contracts of the 2nd October, 1879, and the 22nd November, 1879, and the said agreement of the 2nd September, 1893. On and from the date on which the Company shall have completed the said system of electric traction in all respects to the satisfaction of the Engineer to the Corporation, and thereafter throughout the period which shall elapse until the tramways, plant, machinery, buildings, rolling-stock, stores and premises shall be purchased by the Corporation in exercise of the liberty accorded by clause 5, the Company will pay to the Corporation the fixed track-rent of Rs. 35,000 *per annum* in respect of all the now-existing tramways without exception, provided that, if the working by the Company of any now-existing tramway or any portion thereof shall with the previous sanction of the Corporation be hereafter discontinued, the Company shall be entitled to a proportionate reduction of the said fixed rent in respect of the tramway or portion thereof, the working whereof, shall be so discontinued.

8. As from the date on which the Company shall have completed the said system of electric traction, and throughout the period which shall elapse between such date and the date of the purchase by the Corporation of the property of the Company in manner hereinbefore provided, the Company shall on all tramways the subject of this agreement provide and maintain such a full and proper daily service of tramcars running in both directions as shall in the opinion of the Chairman of the Corporation be sufficient for the requirements and convenience of the public.

9. If the Company shall in any respect fail to maintain a fit and proper daily service of tramcars to the satisfaction of the Chairman of the Corporation, or shall in any respect fail to maintain the tramways in good and efficient order or the tramcar in efficient condition to the satisfaction of the Engineer of the Corporation, the Chairman or the Engineer, as the case may be, shall give notice to the Company to make good any default by a date to be named in such notice, and should the Company take objection to such notice as being in any respect unreasonable, the matter in question shall be referred to arbitration in the manner provided in the said

(The Schedule.)

Concession or Contract of the 2nd October, 1879, and the arbitrators or their umpire shall, by their or his award be empowered to direct the Company to do all works and things necessary to keep the tramways in good and efficient order or to maintain a fit and proper daily service of tramcars or to maintain the cars in efficient condition, as the case may be, and the Company shall forthwith comply with the direction in such award within such period as shall be named therein, and, from the date of the submission to such arbitration or the date that may be fixed by the Engineer, if his decision is accepted, the Company shall, until they shall have complied with such notice or direction, be liable to pay and on demand by the Corporation shall pay the full track-rent provided for in the said Concession or Contract of the 2nd October, 1879, and shall forfeit all right to or benefit of any modification of such rent during such period.

**Ben. Act].
I of 1880.**

10. And it is expressly agreed and declared that, subject to the sanction and authorization of this Agreement by an Act of the Bengal Legislative Council, the said Concessions or Contracts of the 2nd October, 1879, and the 2nd November, 1879, respectively, and the Calcutta Tramways Act, 1880, Act III (B.C.) of 1894¹ and the Agreement of the 2nd September, 1893, shall be read and construed as extended and varied or modified by this agreement.

Schedule referred to in the foregoing Agreement.

Bow Bazar Street.	Wellington Street
Lal Bazar.	Kidderpore line.
Strand Road	Old Court House Street.
Dhurumtollah Street.	Lower Chitpore Road.
Cornwallis Street.	Dalhousie Square, South.
College Street.	Hare Street Junctions.
Wellesley Street.	Chowringhee—all crossings.

Nimtollah Ghât Street—whole.

As witness the hands of the Chairman and two other Commissioners and the seal of the Corporation of Calcutta and the hand of John Richard Maples, the duly-constituted Attorney of the Calcutta Tramways Company, Limited, in the name and on behalf of the Company.

Given under the common seal of the Corporation of Calcutta and duly signed in the presence of

W. R. MACDONALD,
Secretary.

W. R. BRIGHT, C.S.,
Chairman.

SATISH CHANDRA GHOSH,

E. M. D. COHEN,

Municipal Commissioners.

¹The Calcutta Tramways Act, 1894.

The Calcutta Tramways (Electric Traction) Act, 1900. 187

of 1900.]

(The Schedule.)

Witnesses to the signature of John
Richard Maples, the duly-consti-
tuted Attorney of the Calcutta
Tramways Company, Limited, in
the name and on behalf of the
Company.

JOHN CAVE ORR,
Attorney-at-law.

J. W. ORR,
Attorney-at-Law,
Calcutta.



THE CALCUTTA
TRAMWAYS Co., **Ld.**,
By their Attorney
JNO. R. MAPLES.

Bengal Act I of 1903.

[The Bengal Tenancy (Validation and Amendment) Act, 1903.]¹

(25th February 1903.)

VIII of
1885.

An Act to validate certain transfers, made under the Bengal Tenancy Act, 1885, of permanent tenures and holdings at fixed rents or fixed rates and of shares in the same; and to amend section 106 of that Act.

Whereas doubts and difficulties have arisen respecting the meaning and effect of sections 12, 13, 17 and 18 of the Bengal Tenancy Act, 1885, as regards the payment of the prescribed landlord's fee and the effect of the non-payment of such fee;

And whereas it is expedient to declare that registered transfers and sales and decrees or orders for foreclosure of mortgage, confirmed and made absolute by the Civil Courts, of permanent tenures and holdings at fixed rates and fixed rents, and of shares in such tenures and holdings, shall not be deemed to be invalid merely on the ground that the landlord's prescribed fee has not been paid;

And whereas it is also expedient to amend section 106 of the said Act in manner hereinafter appearing;

And whereas the said Act having been passed by the Governor General of India in Council, the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

55 & 56
Vict., c.
14.

It is hereby enacted as follows:—

1. No transfer which has heretofore been made or which may hereafter be made under section 12, section 13, section 17 or section 18 of the Bengal Tenancy Act, 1885, of a permanent tenure, or of a holding at a rent or rate of rent fixed in perpetuity or of a share in such tenure or holding, shall be deemed to be invalid merely on the ground that the landlord's fee prescribed by the said section 12 or 13 has not been paid:

Validation
of transfers
of tenures and
holdings and
shares in the
same.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1902, Pt. IV, p. 21; for Report of Select Committee, see *ibid*, Pt. IV, p. 36; for proceedings in Council, see *ibid*, Pt. IVA, pp. 85, 89, and *ibid*, 1903, Pt. IVA, p. 1.

LOCAL EXTENT.—Since this Act amends the Bengal Tenancy Act, 1885 (VIII of 1885), its local extent must be taken to be the same as that of the latter Act.

The present Act has been extended, by notifications under the Scheduled Districts Act, 1874 (XIV of 1874), sections 5 and 5A, to the Jalpaiguri district, subject to certain restrictions in the case of the Western Duars.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4(2).

190 *The Bengal Tenancy (Validation and Amendment)*
Act, 1903.

[**Ben. Act I of 1903.**]

(*Secs. 2-5.*)

Provided always that, subject to the *Explanation* following, nothing in this section shall be held to affect the decision of a Court of competent jurisdiction which has become final before the commencement¹ of this Act.

Explanation.—A decree in a suit for rent which has become final disallowing a claim for rent on the ground that the relationship of landlord and tenant does not exist between the parties to the suit by reason of the non-payment of the landlord's fee shall not bar a suit for rent which became payable subsequently to such claim.

Realization
of fee when
left unpaid.

2. In any case where the prescribed fee has been or may hereafter be left unpaid, the landlord may, within two years of the commencement¹ of this Act,

or within two years of the date of registration of the document effecting the transfer,

or within two years of the date of confirmation of the sale by the Civil Court,

or within two years of the date upon which a decree or order absolute for the foreclosure of a mortgage has been or may hereafter be made by the Civil Court,

apply to the Collector for realization of such fee from the transferee, or from the auction-purchaser or from the person who has obtained an order absolute for foreclosure of mortgage in the Civil Court, and on such application being presented, the Collector shall realize such fee if still unpaid, together with costs of realization, from such person as if it were an arrear of revenue.

Saving of
section 88.

3. Nothing in section 1 shall be deemed to affect the provisions of section 88 of the said Bengal Tenancy Act, 1885.

VIII of
1885.

4. [Amendment incorporated in Act VIII of 1885.]

Short title.

5. This Act may be called the Bengal Tenancy (Validation and Amendment) Act, 1903.

¹i.e., the 25th February, 1903.

Bengal Act II of 1904.

(The Bengal Public Parks Act, 1904).¹

(9th March, 1904.)

An Act for the regulation of Public Parks in Bengal.

Whereas it is expedient to protect public parks and gardens in Bengal² from injury, and to secure the public from molestation and annoyance while resorting to such parks and gardens ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Public Parks Act, 1904. Short title and application.

(2) It applies to the public parks and gardens mentioned in the schedule, and may be applied to any other public park or garden in Bengal² by order of the ³[Provincial Government] published in the⁴ [*Official Gazette*].

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “ park ” means any public park or garden to which this Act applies by virtue of section 1, sub-section (2), or any order published thereunder ;

(b) “ superintendent ” means the person in executive charge of a park ; and for the purposes of section 6, sub-section (2), includes also—

(i) an assistant superintendent of a park, and

(ii) any member of the Managing Committee (if any) of a park ; and

(c) “ park durwan ” means any person appointed by the superintendent, or by the authority to whom the superintendent is subordinate, to act as a durwan of the park.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1903, Pt. IV, p. 62 ; for Report of Select Committee, see *ibid*, 1904, Pt. IV, p. 22 ; and for Proceedings in Council, see *ibid* 1903, Pt. IVA, pp. 218, 224 and *ibid*, 1904, Pt. IVA, pp. 2 and 14.

LOCAL EXTENT.—This Act applies to the public parks and gardens mentioned in the schedule, and may be applied to others by order—see s. 1 (2).

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), section 4 (2).

²This includes the present Province of Bengal and other territory.

³These words were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words “*Calcutta Gazette*” *ibid*.

(Secs. 3-4.)

Power to extend boundaries of park.

3. The ¹[Provincial Government] may, by notification in the ²[*Official Gazette*] declare that any specified land, bridge or pontoon shall, for the purposes of this Act, be deemed to be included in any park.

Power to make rules.

4. (1) The ¹[Provincial Government] may make rules for the management, and preservation of any park, and for regulating the use thereof by the public.

(2) In particular, and without prejudice to the generality of the foregoing power such rules may—

- (a) regulate the admission of persons, horses and ponies, and carriages, palanquins and other conveyances, into the park, and prescribe fees to be paid therefor ;
- (b) prohibit or regulate the bringing of dogs, motor-cars, bicycles or tricycles into the park ;
- (c) prohibit the doing of all or any of the following things, by persons other than employees of the park, that is to say, plucking or gathering anything growing in the park, breaking trees, branches or plants cutting names or marks on trees, disfiguring buildings, furniture or monuments, removing or disfiguring labels or marks attached to trees or plants ;
- (d) prohibit the purchase of any produce of the park otherwise than from the superintendent or some other authorised person ;
- (e) prohibit shooting, bird-nesting, the catching of butterflies, or any act of cruelty ;
- (f) prohibit or regulate fishing or boating and prescribe fees to be paid by persons obtaining permission to fish or to use boats ;
- (g) prohibit bathing, or the pollution of water by any other means ;
- (h) prohibit the grazing of horses or ponies ;
- (j) prohibit the teasing or annoying of animals or birds kept in the park ;
- (k) prohibit the commission of any nuisance, or the molestation or annoyance of any person resorting to the park.

(3) In making any rule under this section, the ¹[Provincial Government] may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees,

¹See foot-note 3 on p. 191, *ante*.

²See foot-note 4 on p. 191, *ante*.

of 1904.]

(Secs. 5-7.)

(4) The power to make rules under this section is subject to the condition that they shall be made after previous publication.

(5) All rules made under this section shall be published in the ¹[*Official Gazette*].

5. One or more copies in English and in one or more vernacular languages, of every notification published under section 3, and of all rules made under section 4 for observance by persons resorting to a park, and for the time being in force, shall be put up in the park in such conspicuous manner as the superintendent may deem best calculated to give information to such persons.

Exhibition of copies of notifications and rules in park.

6. (1) If any person who, in the presence of a park durwan in uniform, has committed or has been accused of committing a breach of any rule made under section 4, and who is unknown to such durwan, refuses, on demand of such durwan, to give his name and residence, or gives a name or residence which such durwan has reason to believe to be false, such person may be detained by such durwan in order that his name or residence may be ascertained.

Refusal of offender to give name and residence.

(2) When any person is detained under sub-section (1) he shall forthwith be taken to the superintendent, or, if the superintendent be not present in the park or its immediate precincts, such person shall be taken to the nearest police-station, or if he so requests, to the nearest Magistrate having jurisdiction to try him.

(3) If the true name and residence of any person so taken to the superintendent be not ascertained within a reasonable time, the superintendent shall forthwith send for an officer of police, and shall detain the offender until the arrival of such an officer, and shall then deliver him into the custody of such officer, to be taken to the nearest police-station.

(4) If the true name and residence of any person taken to a police-station under this section be not ascertained within a reasonable time, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction to try him.

(5) When the true name and residence of any person detained under this section have been ascertained, he shall be allowed to depart.

(6) No person shall be detained under this section for a longer period than twelve hours.

7. Every superintendent and park durwan shall, for the purposes of the Indian Penal Code, be deemed to be a public servant.

Superintendent and park durwan deemed "public servants."

Act XLV
of 1860.

¹See foot-note 4 on p. 191, ante.

[Ben. Act II of 1904.]

(Secs. 8, 9 and the Schedule.)

General
powers, duties,
etc., of park
durwan.

8. Every park durwan shall, in addition to any powers and immunities specially conferred on him by this Act or by rules made hereunder, have, within the limits of the park to which he is appointed, all such powers, privileges and immunities, and shall, within the said limits, be liable to all such duties and responsibilities, as a police-constable has and is liable to within the limits of the police-station in which such park is comprised :

Provided that every park durwan shall be subordinate to the superintendent.

General
powers, etc.,
of police-
constables.

9. Every police-constable employed within the limits of a police-station shall have, within any park comprised in such limits, the powers, privileges, and immunities conferred on a park durwan by this Act and any rules made hereunder.

THE SCHEDULE.

PUBLIC PARKS AND GARDENS TO WHICH THIS ACT APPLIES IN THE FIRST INSTANCE.

[See section 1, sub-section (2).]

The Royal Botanic Garden, Sibpur.

The Zoological Garden, Alipur.

The Eden Gardens, Calcutta.

The Lloyd Botanical Garden, Darjeeling.

The Victoria Pleasance, Darjeeling.

Bengal Act III of 1904.

The Bengal Settled Estates Act, 1904.

CONTENTS.

PART I.

PRELIMINARY

SECTION.

1. Short title and extent.
 2. Definitions.
-

PART II.

APPLICATION FOR PERMISSION TO MAKE A FIRST SETTLEMENT OF AN ESTATE.

3. Who may apply for permission to settle an estate.
 4. Signature, verification and contents of application.
 5. Declarations and draft to accompany application in the case of an estate belonging to a joint Hindu family or to co-sharers.
 6. Power to reject application.
 7. Transmission and notification of application.
 8. Rejection or approval of application after notification.
 9. Rejection no bar to making fresh application.
-

PART III.

PROVISIONS TO BE CONTAINED IN FIRST SETTLEMENTS.

10. Settlement of estates for three generations.
 11. Further remainders.
 12. Further provisions in settlements.
-

PART IV.

SUPPLEMENTARY SETTLEMENTS AND FRESH SETTLEMENTS.

13. Supplementary settlement in respect of property.
14. Power to apply for permission to make a supplementary settlement in respect of persons.
15. Power to apply for permission to make a fresh settlement.
16. Procedure in dealing with applications under section 14 or 15.
17. Provisions as to fresh settlements.

PART V.

SETTLEMENTS GENERALLY.

18. Approval, stamping and registration of settlements.
19. Approval, stamping and registration of instruments of surrender.
20. Bar to application of succession laws in respect of property comprised in settlement.
21. Power of Provincial Government to grant certificate after death of tenant for life.
22. Notification of instruments of settlement and instruments of surrender or revocation of settlement.
23. Abrogation of inconsistent laws.

PART VI.

REVOCATION, CANCELLATION AND AMENDMENT OF SETTLEMENTS.

24. Revocation of settlement by tenant for life.
25. Cancellation or amendment of settlement by Provincial Government.
26. Revival of incumbrances on revocation, cancellation or amendment of settlement.

PART VII.

RIGHTS AND POWERS OF TENANT FOR LIFE, AND PROTECTION OF SETTLED ESTATE DURING HIS LIFE.

27. Right of tenant for life to profits of settled estate.
28. Restriction on alienation by tenant for life.
29. Sales by tenant for life.
30. Leases by tenant for life.
31. Saving of leases of *raiyati* holdings.
32. Bar to sale of settled estate in execution of decree.
33. Sale of settled estate for arrears of land-revenue, etc.
34. Procedure for recovery of such arrears.

PART VIII.

MISCELLANEOUS.

35. Form, publication and duration of permissions granted by Provincial Government.
36. Notifications how to be published.
37. Power to make rules.
38. Application of Court of Wards Act, 1879.
39. Saving of rights of secured creditors.

Bengal Act III of 1904.

(The Bengal Settled Estates Act, 1904.)¹

(9th March 1904.)

*An Act to facilitate family settlement of estates in Bengal.*²

Whereas it is expedient to facilitate the making of family settlements of estates by landholders in Bengal² ;

XI of 1859. And whereas, the Bengal Land-revenue Sales Act, 1859,
X of 1865. the Indian Succession Act, 1865, the Court-fees Act, 1870, the
VII of Indian Limitation Act, 1877³, the Probate and Administration
1870. Act, 1881, the Transfer of Property Act, 1882, the Succession
XV of Certificate Act, 1889, and the Indian Stamp Act, 1899, having
1887. been passed by the Governor General of India in Council,
V of 1881. the previous sanction of the Governor General has been
IV of 1882. obtained, under section 5 of the Indian Councils Act, 1892,
VII of 1889. to the passing of this Act ;
II of 1899. It is hereby enacted as follows :—
55 & 56
Viet., c. 14.

PART I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Settled Estates Act, 1904 ; and Short title
and extent.

(2) It extends to the whole of Bengal² .

2. (1) In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “ estate ” includes—

- (i) immovable property,
- (ii) money, and securities for money, and
- (iii) any jewellery or other movable property which should, in the opinion of the ⁴[Provincial Government] be treated as heirlooms ;

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1903, Pt. IV, p. 57 ; for Report of Select Committee, see *ibid*, 1904, Pt. IV, p. 1 ; and for Proceedings in Council, see *ibid*, 1903, Pt. IVA, pp. 192, 207, and *ibid*, 1904, Pt. IVA, pp. 2 and 16.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal—see s. 1 (2) ; but its application is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4(2).

²This includes the present Province of Bengal and other territory.

³Act XV of 1877 has been repealed and re-enacted by the Indian Limitation Act, 1908 (IX of 1908).

⁴These words were substituted for the words “ Local Government ” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Part I—Preliminary.—Sec. 2.)

- (b) "settled estate" means an estate in respect of which a settlement made under this Act is for the time being in force ;
- (c) "settlor" means the person who makes a settlement under this Act ;
- (d) "first tenant for life" means the settlor ;
- (e) "second tenant for life" means the person appointed by a settlement made under this Act to take a settled estate on the death of the first tenant for life, or who, on the surrender by the first tenant for life, takes his interest under the settlement ;
- (f) "third tenant for life" means the person appointed by a settlement made under this Act to take a settled estate on the death of the second tenant for life, or who, on the surrender by the second tenant for life, takes his interest under the settlement ;
- (g) "tenant for life" means a first, second or third tenant for life ;
- (h) "son" includes a son born after the execution of a settlement, and in the case of anyone whose personal law permits adoption, includes also a son—
 - (i) duly adopted, either before or after the execution of a settlement, by the adoptive father himself, or
 - (ii) duly adopted to her deceased husband within five years after his death, by a widow, acting under authority, in writing and registered lawfully conferred on her by him in that behalf ;
- (j) "secured debt" means a debt, demand or claim which is secured by way of a mortgage, charge or lien on specified property and is primarily enforceable against such property ;
- (k) "unsecured debt" means a debt, demand or claim (other than a secured debt) for any sum exceeding five hundred rupees, which is enforceable against the person or general property of the debtor ;
- (l) "secured creditor" means a person who is entitled to enforce payment of a secured debt ;
- (m) "unsecured creditor" means a person who is entitled to enforce payment of an unsecured debt ;
- (n) "incumbrance" means a secured debt, or an unsecured debt, or both ;

of 1904.]

(Part II.—Application for Permission to make a First Settlement of an Estate.—Sec. 3.)

- (o) the expression “ the Collector ” when used with reference to any estate, means the Collector of the district in which the estate or any part thereof is situated ; and
- (p) the expression “ the Civil Court,” when used with reference to any estate, means the principal Civil Court having original jurisdiction in the area in which the estate or any part thereof is situated.

(2) A person shall be deemed, for the purposes of this Act, to be “ competent to contract ” if he is of the age of majority according to the law to which he is subject, and is of sound mind, and is not disqualified from contracting by any law to which he is subject.

(3) All words and expressions used in this Act, which are IV of 1882. defined in the Transfer of Property Act, 1882, shall have the same meaning as in that Act.

PART II.

APPLICATION FOR PERMISSION TO MAKE A FIRST SETTLEMENT OF AN ESTATE.

3. (1) Any landholder may apply to the ¹[Provincial Government] for permission to make a settlement of an estate under this Act.—

Who may apply for permission to settle an estate.

- (a) if he is competent to contract,
 - (b) if he is in possession of the estate, either in his own right or along with or on behalf of others, and
 - (c) if the estate is held in permanent, heritable and transferable right :
- (2) Provided that no application may be made under subsection (1) in respect of any estate—
- (i) unless the applicant is solely entitled to the estate, or
 - (ii) if the estate belongs to a joint Hindu family —unless the applicant is the *karta* or managing member of the family, or
 - (iii) if the estate belongs to co-sharers —unless the applicant is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, the sole right of management over the estate.

¹See foot-note 4 on p. 197, *ante*.

[Ben. Act III]

(Part II.—Application for Permission to make a First Settlement of an Estate.—Secs. 4, 5.)

Signature,
verification
and contents
of application.

4. (1) Every such application must be in writing, and must be signed by the applicant and verified by him in the manner prescribed in ¹[sub-rules (2) and (3) of rule 15 in Order VI in Schedule I to the Code of Civil Procedure, 1908,] for the verification of plaints.

Act V of
1908.

(2) Every such application must contain the following particulars, namely:—

- (a) a description of the estate, sufficient for its identification;
- (b) a statement of the income yielded annually by the property comprised in the estate, and the revenue, rates and taxes due to the Government or any Local Authority annually in respect of such property; and
- (c) a list giving a full and complete enumeration and description of all incumbrances held by secured and unsecured creditors, respectively, and enforceable against the applicant or the estate; with the name and address of each such creditor, and a correct statement of the amount due to each such creditor.

Declarations
and draft to
accompany
application in
the case of an
estate belonging
to a joint
Hindu family
or to co-
sharers.

5. (1) If any estate in respect of which an application is made under section 3 belongs to—

- (a) a joint Hindu family, or
- (b) co-sharers,

the application must be accompanied by—

- (i) a sworn declaration by the applicant,—
 - in case (a), that he is the *karta* or managing member of the family, or
 - in case (b), that he is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, as the case may be, the sole right of management over the estate; and
- (ii) a sworn declaration, in case (a), by the other co-owners, or in case (b) by the other co-sharers, that they are willing to assent to the estate being settled under this Act; and
- (iii) a draft of the proposed instrument of settlement.

(2) If any of the said other co-owners or co-sharers is, at the time when the application is made, a minor, a declaration under clause (ii) of sub-section (1) may be accepted if it is made on behalf of such minor by the guardian of his property or (when a guardian of his property cannot lawfully

¹These words and figures were substituted for the words and figures "section 52 of the Code of Civil Procedure," by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

of 1904.]

(Part II.—Application for Permission to make a First Settlement of an Estate.—Secs. 6, 7.)

VIII of
1890.

be appointed) the guardian of his person, appointed or declared under the Guardians and Wards Act, 1890, or any other law for the time being in force, and

approved by an order in writing under the seal of the Court which appointed or declared the guardian.

(3) If any of the aforesaid other co-owners or co-sharers is, at the time when the application is made, a lunatic, a declaration may be accepted under clause (ii) of sub-section (1) if it is

IV of
1912.

made on behalf of such lunatic by his ¹[manager appointed under the Indian Lunacy Act, 1912], or any other law for the time being in force, and

approved by an order in writing under the seal of the Court which appointed the ²[manager].

6. The ³[Provincial Government] may in its discretion, and after such inquiry (if any) as it may think fit to make, by written order reject any application made under section 3.

Power to
reject appli-
cation.

7. If any application made under section 3 is not rejected under section 6, and if the ³[Provincial Government] is satisfied that the conditions specified in section 3 are fulfilled, and that the provisions of sections 4 and 5 have been duly complied with,

Transmission
and notification
of application.

the ³[Provincial Government] shall send a copy of the application, and of the declarations which accompanied it, as also a copy of the draft of the proposed instrument of settlement, to each creditor who is named in the application, and to each person who has made a declaration in pursuance of clause (ii) of section 5;

and ⁴* * shall publish a notification—

(a) setting forth the application [except the particulars inserted therein in pursuance of clause (b) of section 4] and the declarations which accompanied it;

(b) calling upon all creditors, whether secured or unsecured, holding or entitled to incumbrances enforceable against the applicant or the estate to which the application relates, and all other persons interested or claiming to be interested in the estate, to send to the ³[Provincial Government] a written notice of their incumbrances and interests, respectively, within a period of six months from the date of the notification; and

¹These words and figure were substituted for certain words and figure by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²This word was substituted for the word "Committee," *ibid.*

³See foot-note 4 on p. 197, *ante*.

⁴The words "with the previous sanction of the Governor General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

[Ben. Act III]

(Part II.—Application for Permission to make a First Settlement of an Estate.—Secs. 8, 9.)

- (c) intimating that any objections to the proposed settlement, whether urged by creditors or by other persons interested in the estate, which may be communicated to the ¹[Provincial Government] in writing within the said period, will be duly considered.

Rejection or approval of application after notification.

8. (1) At any time after the expiration of the said period, and after considering any notices and objections received under section 7 and after such inquiry (if any) as it may think fit to make, the ¹[Provincial Government] may, in its discretion by written order either—

- (a) reject such application, or
- (b) grant permission to make the proposed settlement, in respect either of the whole of the property to which the application relates or of any part thereof :

Provided that, if any incumbrances have been set forth in the application or brought to the notice of the ¹[Provincial Government], such permission shall not be granted unless—

- (i) the incumbrances are first discharged, or
- (ii) a condition is made for the insertion in the settlement of provisions, to be assented to by the creditors and approved by the ¹[Provincial Government], for the discharge of the incumbrances, or for their continuance, with or without modification, and for the payment of interest thereon.

(2) If the right of the applicant to make the settlement is disputed by or on behalf of any person interested for claiming to be interested in the estate, the ¹[Provincial Government] may, if it thinks fit, refer the matter in dispute to the Civil Court for decision, before determining whether to reject the application or to grant permission to make the proposed settlement ; and the Civil Court shall, in dealing with any such reference follow the procedure prescribed in the Code of Civil Procedure, ²[1908], for the trial of suits, so far as the same may be applicable.

Act V of 1908.

(3) Every decision by the Civil Court under sub-section (2) shall be deemed to be a decree within the meaning of the Code of Civil Procedure ²[1908]; and an appeal therefrom shall lie to the High Court.

Act V of 1908.

Rejection no bar to making fresh application.

9. The rejection under section 6 or section 8 of an application for permission to make a settlement of an estate under the foregoing provisions of this Act shall be no bar to the making of a fresh application in respect of the same estate, if the applicant shows sufficient reason for so doing.

¹See foot-note 4 on p. 197, *ante*.

²This figure was inserted by the Bengal Repealing and Amending Act, 1938 (Ben. I Act of 1939.)

of 1904.]

(Part III.—Provisions to be contained in First Settlements.—
Sec. 10.)

PART III.

PROVISIONS TO BE CONTAINED IN FIRST SETTLEMENTS.

10. (1) Every settlement made under the foregoing provisions of this Act in respect of any estate shall provide that the estate shall be held for life— Settlement of estates for three generations.

- (a) by the settlor, as first tenant for life;
- (b) and thereafter, by the second tenant for life, who shall be the eldest or only son of the first tenant for life ;
- (c) and thereafter, by the third tenant for life, who shall be the eldest or only son of the second tenant for life.

(2) Every such settlement shall further provide,—

- (i) if the estate is one to which the settlor was, immediately before the execution of the settlement, solely entitled—that, after the life of the third tenant for life, the eldest or only son of such tenant shall hold the estate absolutely;
- (ii) if the estate belonged, immediately before the execution of the settlement, to a joint Hindu family—that, after the life of the third tenant for life, the eldest or only son of such tenant shall during his life be the *karta* or manager of the estate, but without prejudice to the rights of any persons who, but for the settlement, would be co-owners of the estate; and
- (iii) if the estate belonged, immediately before the execution of the settlement, to co-sharers—that, after the life of the third tenant for life, the eldest or only son of such tenant shall have during his life the sole right of management over the estate;

but subject in each case to the terms of any fresh settlement made by a tenant for life in pursuance of permission granted under section 16.

(3) If the eldest or only son of the settlor has predeceased the settlor, or if the settlor desires to exclude such son from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the ¹[Provincial Government], then, notwithstanding anything contained in the foregoing sub-sections, the ¹[Provincial Government] may permit him to provide in the settlement—

- (i) that the second tenant for life shall be another son of the settlor, if he has another son, or the eldest or only

¹See foot-note 4 on p. 197 *ante*.

[Ben. Act III]

(Part III.—Provisions to be contained in First Settlements.—
Secs. 11, 12.)

son of the son who has predeceased the settlor or has been excluded as aforesaid, and

- (ii) that the third tenant for life shall be the eldest or only son of the second tenant for life, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid.

(4) Any settlement made under the foregoing provisions of this Act may provide that any tenant for life may, with the previous sanction of the ¹[Provincial Government], by written instrument surrender his interest under the settlement in favour of the next tenant for life.

Further
remainders.

11. Every settlement made under the foregoing provisions of this Act may also contain provisions for vesting the estate, in the event of the settlement on the second tenant for life or the third tenant for life or his son failing to take effect, in some other person descended from the settlor or the settlor's father in the direct male line.

Further
provisions in
settlements.

12. (1) Every settlement made under the foregoing provisions of this Act shall specify all incumbrances referred to in clause (ii) of section 8.

(2) Every such settlement shall also contain such provisions as may be approved by the ¹[Provincial Government] with regard to the following matters, namely:—

- (a) the discharge of incumbrances on the estate, and the payment of interest thereon; or their continuance (with or without modification), and the payment of interest thereon;
- (b) the maintenance of the co-owners and co-sharers (if any) by or on whose behalf a declaration has been made under clause (ii) of section 5, and of all persons who at the time of the execution of the settlement are, or thereafter may be, legally entitled to maintenance out of the estate;
- (c) the management of the estate after the death of the settlor—
 - (i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or
 - (ii) during the minority of the second tenant for life;
- (d) the management of the estate after the death of the second tenant for life—
 - (i) during a period not exceeding five years after such death, pending the adoption of a son

¹See foot-note 4 on p. 197, *ante*.

of 1904.]

(Part IV.—*Supplementary Settlements and Fresh Settlements.*

—Sec. 13.)

under the circumstances described in sub-clause (ii) of clause (h) of section 2, or

(ii) during the minority of the third tenant for life;

(e) the management of the estate after the death of the third tenant for life—

(i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or

(ii) during the minority of the next holder.

(3) If any settlement made under the foregoing provisions of this Act includes money, securities for money, or movable property, the settlement shall contain such provisions as may be approved by the ¹[Provincial Government] for vesting such money, securities or property in a trustee, for the investment or conversion of such money or securities in or into securities authorized by section 20 of the Indian

II of 1882.

Trusts Act, 1882, and the payment to the trustee of expenses and remuneration in accordance with rules made under section 37, clause (c).

Explanation.—The Official Trustee of Bengal, the Collector or any private person may be appointed to be a trustee for the purposes of this sub-section.

(4) In addition to the various matters hereinbefore specified the ¹[Provincial Government] may require or permit the insertion in any settlement made under the foregoing provisions of this Act, of any provisions which it may think fit, and may make its approval of the settlement conditional on the insertion of provisions which it has required to be inserted:

Provided that no provisions inserted in pursuance of this sub-section shall operate to the prejudice of any secured or unsecured creditor unless assented to by him.

PART IV.

SUPPLEMENTARY SETTLEMENTS AND FRESH SETTLEMENTS.

13. (1) At any time after a settlement has been made under the foregoing provisions of this Act, a tenant for life

Supplement-
ary settlemen
in respect of
property.

¹See foot-note 4 on p. 197, *ante*.

[Ben. Act III]

(Part IV.—*Supplementary Settlements and Fresh Settlements.*

—Secs. 14-16.)

may apply to the ¹[Provincial Government] for permission to make a supplementary settlement for the purpose of adding further property to the settled estate—

- (a) if he is competent to contract,
- (b) if he is in possession of such property, either in his own right or along with or on behalf of others, and
- (c) if such property is held in permanent, heritable and transferable right :

(2) Provided that no application may be made under sub-section (1) in respect of any property—

- (i) unless the applicant is solely entitled to the property, or
- (ii) if the property belongs to a joint Hindu family—unless the applicant is the *karta* or managing member of the family, or
- (iii) if the property belongs to co-sharers—unless the applicant is a principal shareholder in the property and has, by custom or with the consent of his co-sharers, the sole right of management over the property.

(3) The provisions of sections 4 to 9 shall apply to every application made under sub-section (1) in respect of any property, and the provisions of sections 10 to 12 shall apply to every settlement of such property, as if the property were an “estate” within the meaning of those sections.

Power to apply for permission to make a supplementary settlement in respect of persons.

14. If, at any time after any settlement has been made under the foregoing provisions of this Act, the second tenant for life dies during the life of the settlor, or the settlor desires to exclude him from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the ¹[Provincial Government],

the settlor may, if he is competent to contract, apply to the ¹[Provincial Government] for permission to make a supplementary settlement for the purpose of appointing to be second tenant for life and third tenant for life respectively, any other persons who might have been so appointed in pursuance of clauses (i) and (ii) of sub-section (3) of section 10.

Power to apply for permission to make a fresh settlement.

15. At any time after any settlement has been made under the foregoing provisions of this Act, a tenant for life of a settled estate may, if he is competent to contract, apply to the ¹[Provincial Government] for permission to make a fresh settlement of the estate.

Procedure in dealing with applications under section 14 or 15.

16. (1) The provisions of section 4, sub-section (1), and section 9 shall apply to every application for permission to

¹See foot-note 4 on p. 197, *ante*.

of 1904.]

(Part IV.—*Supplementary Settlements and Fresh Settlements.*

—Sec. 16.)

make a supplementary settlement in respect of persons or a fresh settlement.

(2) If any such application relates to an estate to which the settlor was, immediately before the execution of the former settlements, respectively, solely entitled, the ¹[Provincial Government] may, in its discretion, and after such inquiry (if any) as it may think fit to make, by written order, either

(i) reject the application, or

(ii) grant permission to make the proposed settlement.

(3) If any such application relates to an estate which belonged, immediately before the execution of the former settlements, respectively, to a joint Hindu family or to co-sharers the application must be accompanied by a declaration by all persons (other than the applicant) who, but for such settlements, would be co-owners or co-sharers in the estate, to the effect that they are willing to assent to the proposed settlement.

(4) If any of such co-owners or co-sharers is, at the time when the application is made, a minor or a lunatic, a declaration under sub-section (3) of this section may be accepted if it is made and approved as indicated in sub-section (2) or sub-section (3), as the case may be, of section 5.

(5) In every case referred to in sub-section (3) of this section, the ¹[Provincial Government]

shall send a copy of the application, and of the declarations which accompanied it, to each person who has made a declaration in pursuance of that sub-section :

and² * * * * * shall publish a notification—

- (a) setting forth the application and the declarations which accompanied it ;
- (b) calling upon all persons (other than creditors) interested or claiming to be interested in the estate, to send to the ¹[Provincial Government] written notice of their interests within a period of six months from the date of the notification, and
- (c) intimating that any objections by such persons to the proposed settlement, which may be communicated to the ¹[Provincial Government], in writing within the said period, will be duly considered ;

and, at any time after the expiration of the said period and after considering any notices and objections received under this sub-section, and after such inquiry (if any) as it

¹See foot-note 4 on p. 197, *ante*.

²The words " with the previous sanction of the Governor General in Council " were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

[Ben. Act III]

(Part IV.—*Supplementary Settlements and Fresh Settlements.*—Part V.—*Settlements generally.*—Secs. 17, 18.)

may think fit to make, may, in its discretion, by written order, either—

- (i) reject the said application, or
- (ii) grant permission to make the proposed settlement.

Provisions as
to fresh
settlements.

17. (1) The provisions of sections 10, 11 and 12 shall apply to every fresh settlement made in pursuance of permission granted under section 16.

(2) All property which, immediately before the execution of a fresh settlement in respect of any estate, is included in any former settlement of the estate made under this Act, must be included in such fresh settlement.

(3) No property shall be included in any fresh settlement made under this Act in respect of any estate unless it is, immediately before the execution of such settlement, included in a former settlement of the estate made under this Act.

(4) If any incumbrance, which is dealt with in any former settlement made under this Act in respect of any estate, is still in existence at the time of the execution of the fresh settlement of the estate, then nothing contained in such fresh settlement shall affect the rights of the creditor unless assented to by him.

(5) Every fresh settlement made under this Act in respect of any estate shall, subject to the foregoing provisions of this section, supersede all former settlements made under this Act in respect of such estate.

PART V.

SETTLEMENTS GENERALLY.

Approval,
stamping and
registration
of settlements.

18. (1) No settlement made under this Act shall take effect unless the instrument of settlement—

- (a) is of a non-testamentary character,
- (b) is attested by two or more witnesses,
- (c) has been approved by the ¹[Provincial Government] before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the ¹[Provincial Government],
- (d) bears a stamp of the full value prescribed by sub-section (2), or, if the sanction of the Board of Revenue has been given under sub-section (3), of one-third of such value, and
- (e) is registered within three months after the said approval has been certified as aforesaid.

¹See foot-note 4 on p. 197, *ante*.

of 1904.]

(Part V.—Settlements generally.—Secs. 19,20.)

II of 1899. (2) Every instrument of settlement made under this Act, not being a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15, shall, notwithstanding anything contained in the Indian Stamp Act, 1899 bear a stamp of a value equivalent to one-fourth of the annual net profits of the estate comprised in the settlement.

(3) Provided that a stamp of one-third of such value may be affixed, with the previous sanction of the Board of Revenue on arrangements being made to its satisfaction for the affixing of stamps for the rest of such value at subsequent dates within three years from the date of the instrument.

(4) If any question arises, with reference to sub-section (2) or sub-section (3), as to the amount of the annual net profits of any estate, the decision of the Board of Revenue thereon shall be final.

(5) Every instrument making a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15 shall, notwithstanding anything contained in the Indian Stamp Act, 1899, bear a stamp of ten rupees.

(6) Subject to the foregoing provisions of this section, every instrument of settlement shall take effect from the date of its execution.

19. (1) No instrument of surrender referred to in sub-section (4) of section 10 shall take effect unless it

(a) is of a non-testamentary character ;

(b) is attested by two or more witnesses ;

(c) has been approved by the¹ [Provincial Government] before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the¹ [Provincial Government]

(d) is stamped in accordance with the provisions of the Indian Stamp Act, 1899, and

(e) is registered within three months after the said approval has been certified as aforesaid.

(2) Subject to the foregoing provisions of this section, every such instrument shall take effect from the date of its execution.

Approval, stamping and registration of instruments of surrender.

XXXIX of 1925.

20. (1) Notwithstanding anything contained in ²[the Indian Succession Act, 1925, it shall not be necessary for any person to obtain probate or letters of administration, or a succession certificate] to admit of his taking any property or

Bar to application of succession laws, in respect of property comprised in settlement.

¹See foot-note 4 on p. 197, *ante*.

²These words and figure were substituted for certain words and figure by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

(Part V.—Settlements generally.—Secs.21-23.)

recovering any debt or realizing any security in virtue of a settlement made under this Act.

(2) If any probate, any letters of administration or any certificate granted under ¹[the Indian Succession Act, 1925], purports to cover any property, debt or security which is comprised in a settlement made under this Act, then, notwithstanding anything contained in Article 11 or Article 12 of Schedule I to the Court-fees Act, 1870, no court-fee shall be levied under either of those Articles in respect of such property, debt or security.

XXXIX of
1925.VII of
1870.

Power of
Provincial
Government
to grant
certificate
after death
of tenant for
life.

21. At any time after the death of any tenant for life of a settled estate, any of the Secretaries to the ²[Provincial Government] may, upon the application of any person claiming a right to hold the settled estate under the instrument of settlement, grant a certificate to such person declaring him to be entitled to hold such estate under such instrument; and such certificate shall be presumed to be correct unless and until the contrary is proved.

Notification
of instruments
of settlement
and instru-
ments of
surrender or
revocation of
settlement.

22. (1) When any instrument of settlement or surrender of settlement or revocation of settlement is registered, the registering-officer shall report the fact to the ²[Provincial Government]; and, on receipt of such report, the ²[Provincial Government] shall publish a notification stating the purport of the instrument and the office in which it has been registered.

(2) The Collector shall cause a copy of every such notification to be posted in his office, and to be published on the settled estate at such places and in such manner as may in his opinion be sufficient for giving information to tenants and other persons interested.

Abrogation of
inconsistent
laws.

23. No settlement or part of a settlement made under this Act shall be liable to be avoided or set aside by any Civil Court by reason only that it contravenes—

(a) any provision of the Transfer of Property Act, 1882,
or

IV of
1882.

(b) any law or rule for the time being in force for the prevention of perpetuities, or

(c) any family custom or any personal law or law of succession to which the family is subject,

which is inconsistent with the provisions of this Act.

¹These words and figure were substituted for the words and figure "the Succession Certificate Act, 1889" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)

²See foot-note 4 on p. 197, *ante*.

of 1904.]

(Part VI.—Revocation, Cancellation and Amendment of Settlements.—Secs. 24, 25.)

PART VI.

REVOCATION, CANCELLATION AND AMENDMENT OF SETTLEMENTS.

24. (1) A tenant for life of a settled estate may, at any time, if he is competent to contract, apply to the ¹[Provincial Government] for permission to revoke, either wholly or as respects any particular property, any settlement made under this Act.

Revocation of settlement by tenant for life.

(2) The ¹[Provincial Government], after considering the application, and the result of any inquiry made by it or under its orders, and any further particulars or information called for by it, may, in its discretion, by written order, either—

- (a) reject the application, or
- (b) grant the permission applied for, or
- (c) grant permission to revoke the settlement as respects such property only as may be specified in the order.

(3) When permission is granted under sub-section (2) to revoke a settlement, either wholly or as respects any particular property, the revocation shall not take effect unless the instrument of revocation—

- (i) is of a non-testamentary character,
- (ii) is attested by two or more witnesses,
- (iii) has been approved by the ¹[Provincial Government] before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the ¹[Provincial Government],
- (iv) is stamped in accordance with the provisions of the Indian Stamp Act, 1899, and
- (v) is registered within three months after the said approval has been certified as aforesaid.

11 of 1899.

(4) Subject to the foregoing provision of this section, every such instrument shall take effect from the date of its execution.

25. (1) Notwithstanding anything hereinbefore contained, the ¹[Provincial Government] may at any time declare by notification that any settlement made under this Act in respect of a settled estate shall be deemed

Cancellation or amendment of settlement by Provincial Government.

- (a) to be cancelled, or
- (b) to be amended so as to exclude any part of the estate described in the notification.

¹See foot-note 4 on p. 197, *ante*.

[Ben. Act III]

Part VI.—Revocation, Cancellation and Amendment of settlements.—(Part VII.—Rights and Powers of Tenant for Life, and Protection of Settled Estate during his Life.—Secs. 26-29.)

(2) On the publication of such notification the said settlement shall be deemed to be cancelled or amended as aforesaid, as the case may be.

Revival of
incumbrances,
on revocation,
cancellation
or amend-
ment of
settlement.

26. When any instrument of settlement is revoked under section 24, or cancelled or amended under section 25, the rights of all persons having incumbrances on the estate shall, notwithstanding anything contained in the Indian Limitation Act, [1908], revive and be enforceable as if the settlement had not been made, but subject to any payments which were made while the settlement was in force.

IX of 1908.

PART VII.

RIGHTS AND POWERS OF TENANT FOR LIFE, AND PROTECTION OF SETTLED ESTATE DURING HIS LIFE.

Right of
tenant for life
to profits of
settled estate.

27. All profits of a settled estate, which are realised by a tenant for life, or which, immediately before his death, were due to him but were not realised by him, shall, subject to the other provisions of this Act, belong absolutely to such tenant or his heirs, executors, administrators or assigns :

Provided that if any rents due to a tenant for life in respect of a settled estate were in arrear immediately before his death, the same shall, upon his death, notwithstanding anything contained in this Act, or in the Indian Succession Act, [1925] or in any other law, or in any settlement made under this Act, and notwithstanding any will or other disposition made by such tenant, become due to the next holder of the estate.

XXXIX
of 1925.

Restriction
on alienation
by tenant for
life.

28. Except as provided in sections 29 and 30, a tenant for life of a settled estate shall not be entitled to transfer by way of sale or gift, or otherwise alienate, or to create any incumbrance upon, or to lease, the estate, or any part thereof, or to assign his right to receive any of the profits thereof.

Sales by
tenant for
life.

29. (1) A tenant for life of a settled estate may, with the previous written sanction of the Civil Court, sell the estate or any part thereof.

(2) If the estate belonged, immediately before the execution of the settlement, to a joint Hindu family or to co-sharers the Court shall, before determining to accord such sanction notify the proposed sale to all persons (except the tenant for life) who, but for the settlement, would be co-owners or co-sharers in the estate ; and shall hear and duly consider any objection which may be advanced by them or on their behalf.

(3) The proceeds of every such sale shall be paid by the purchaser to the Collector ; and shall be held by the Collector in trust to re-invest the same, with the approval of the

¹This figures was substituted for the figure " 1877 " by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²This figures was substituted for the figure " 1805 ", *ibid*.

of 1904.]

(Part VII.—Rights and Powers of Tenant for Life. and Protection of Settled Estate during his Life.—Secs. 30-32.)

¹[Provincial Government], in immovable property, which shall, upon such re-investment, be and remain subject to the settlement in like manner as if it had been originally comprised therein.

30. (1) A tenant for life of a settled estate may lease the estate or any part thereof from year to year or for any term not exceeding seven years, or (with the previous written consent of the Collector) for any longer term not exceeding fourteen years, or (with the previous sanction of the ¹[Provincial Government] for any longer term of years or in perpetuity.

Leases by tenant for life.

(2) No premium or fine shall be taken on any such lease granted for a term exceeding seven years, or in perpetuity, except with the previous written consent of the Collector.

(3) When any premium or fine is taken on any lease granted under sub-section (1), then —

(a) if the lease is from year to year or for a term of years, a sum equivalent to four-fifths of the amount of the premium or fine, or

(b) if the lease is in perpetuity, the whole of the premium or fine shall be paid —

(i) to the trustee appointed for the purposes of section 12, sub-section (3), or

(ii) if no trustee has been so appointed, to a trustee to be appointed for the purpose :

and shall be held by such trustee as part of the settled estate, and shall be invested by him in securities authorized by section 20 of the Indian Trusts Act, 1882 :

II of 1882.

Provided that such trustee may retain, for the payment of his expenses and remuneration, such portion of the amount paid to him as may be authorized by rules made under section 37, clause (c).

(4) In respect of every such lease the best rent shall be reserved that can reasonably be obtained.

(5) No payment of any instalment of such rent made to a tenant for life before it falls due shall operate to the prejudice of any subsequent holder of the estate.

31. Nothing in section 28 or sub-sections (1) and (2) of section 30 shall apply to leases of *raiyyati* holdings.

Saving of leases of *raiyyati* holdings. Bar to sale of settled estate in execution of decree.

32. (1) No settled estate or part thereof shall, during the life of a tenant for life, be sold in execution of a decree of a Civil Court.

(2) If any decree against a tenant for life of a settled estate is not satisfied, the Court may, on the application of the decree-holder, appoint a Receiver of such estate or any part thereof,

¹See foot-note 4 on p. 197, *ante*.

(Part VII.—Rights and Powers of Tenant for Life, and Protection of Settled Estate during his Life.—Secs. 33, 34.)

under the provisions of ¹[rules 1 to 3 and 5 in Order XL in Schedule I to the Code of Civil Procedure, 1908], for the purpose of recovering the amount of the decree and, subject to the rights of any secured creditor over such estate or part, satisfying the claims of the decree-holder. Act V of 1908.

(3) An appeal shall lie to the High Court from any order made by a Court under sub-section (2).

Sale of
settled estate
for arrears of
land-revenue,
etc.

33. (1) Notwithstanding anything contained in the Bengal Land-revenue Sales Act, 1859, or any other law, no settled estate or part of a settled estate shall, without the previous sanction of the ²[Provincial Government] be sold, during the life of any tenant for life thereof, for an arrear of land-revenue or for any other arrear which is recoverable in the same manner as an arrear of land-revenue.

XI of 1859.

(2) If any settled estate or part of a settled estate be sold, with the sanction required by sub-section (1) of this section, to any person other than the tenant for life, the resulting surplus shall be dealt with in the manner described in sub-section (3) of section 29 :

and, if the estate or any part thereof be purchased at the sale by the tenant for life, the resulting surplus shall be paid to the tenant for life, and the estate or part so purchased shall, notwithstanding the sale, continue to be subject to the settlement.

(3) If the person whose name is entered in any certificate granted under the said Bengal Land-revenue Sales Act, 1859, or any other law, as purchaser of a settled estate or part thereof, is not the tenant for life, the said resulting surplus may be retained by such person, and shall not be payable to the tenant for life, even though it may be claimed that the purchase was made by such person on behalf of the tenant for life.

Procedure for
recovery of
such arrears.

34. (1) If any such arrear accrues in respect of a settled estate, or any part thereof, during the life of any tenant for life thereof, and if the sale of the estate or part for the recovery of arrear is not sanctioned by the ²[Provincial Government] under section 33, the Collector may attach the estate or part,

and shall thereupon be entitled, to the exclusion of all other persons, to receive all rents and other moneys (if any) due to such tenant in respect of such estate or part,

and may manage the estate or part, either directly or through a manager for such period as may be necessary for the recovery of such arrear.

¹These words and figures were substituted for the words and figures "Chapter XXXVI of the Code of Civil Procedure" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²See foot-note 4 on p. 197, ante.

of 1904.]

(Part VIII.—Miscellaneous.—Sec. 35.)

(2) Upon the expiration of the period referred to in sub-section (1), the Collector shall deduct from the proceeds of the management the amount of the said arrear and of any similar arrears that may have accrued during such period, and any interest thereon, and the expenses incurred in the management; and shall then—

- (a) pay the balance of such proceeds to the person then entitled to hold the estate, and
- (b) furnish such person with an account of the receipts and expenditure during the management, and
- (c) release the estate or part to such person.

(3) If, after a settled estate or part thereof held by a tenant for life has been managed and released by the Collector under sub-sections (1) and (2), any such arrear as aforesaid again accrues in respect of the estate or part during the life of the same tenant, and if the sale of the estate or part thereof for the recovery of the arrear is not sanctioned by the ¹[Provincial Government] under section 33,

the Court of Wards may take charge of and deal with the estate or part under the provisions of the Court of Wards Act, 1879 and may retain such charge until the death of such tenant and, if the next holder is then a minor, until such minor attains his majority;

and the said tenant shall, while the Court of Wards has charge of the estate or part, be debarred from receiving any income from the estate or part, other than such monthly sum as the Court of Wards may allow for the support of himself and his family;

and the powers conferred by sections 29 and 30 of this Act shall while the Court of Wards has charge of the estate or part, be exerciseable by the Court of Wards and not by the said tenant.

PART VIII.

MISCELLANEOUS.

35. (1) Every permission granted by the ¹[Provincial Government] under section 8, section 10, sub-section (3), section 12, sub-section (4), section 13, section 16 or section 24 shall be in writing signed by one of Secretaries to the ¹[Provincial Government], and shall contain a description of the property or person, in respect of which the permission is granted, sufficient to identify the same.

Form, publication and duration of permissions granted by Provincial Government.

(2) Every permission granted by the ¹[Provincial Government] under section 8, section 13, section 16 or section 24 shall be published by notification, and shall remain in force until the

¹See foot-note 4 on p. 197, *ante*.

[Ben. Act III of 1904.]

(Part VIII.—Miscellaneous.—Secs. 36-39.)

expiry of twelve months from the date of the notification, or until the death of the applicant, whichever first happens.

Notifications
how to be
published.

Power to
make rules.

36. Every notification prescribed by this Act shall be published in the ¹[Official Gazette] * * * * *

37. (1) The ³[Provincial Government] may, after previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, the ³[Provincial Government] may make rules for all or any of the following matters, namely :—

- (a) the procedure to be followed in submitting an application to the ³[Provincial Government] under this Act ;
- (b) the form and contents of such applications, and the documents (if any) which should accompany them ;
- (c) the payment to trustees, out of the trust property, of expenses properly incurred in or about the execution of any trust created under this Act, and of remuneration for their trouble, skill and loss of time in executing any such trust ;
- (d) the guidance of the Collector in managing estates attached under section 34 ;
- (e) the payment or recovery of any expenses incurred ⁴[by the Provincial Government] in connection with any proceedings taken under this Act.

Application of
Court of Wards
Act, 1879.

38. The provisions of the Court of Wards Act, 1879, so far as they are not inconsistent with the terms of settlements duly made under this Act, shall be applicable to settled estates. Ben. Act IX of 1879.

Saving of rights
of secured
creditors.

39. Nothing in this Act shall affect the rights of any secured creditor—

- (a) if his incumbrances or any of them have not been set forth in the list prescribed by section 4, clause (c), or
- (b) if he has not assented to any condition inserted in a settlement made under this Act for the discharge or continuance of his incumbrances or any of them.

¹These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "and also in such Vernacular Gazettes (if any) as the Local Government may direct" were repealed by the Bengal Laws Act, 1914 (Ben. Act I of 1914).

³See foot-note 4 on p. 197, *ante*.

⁴These words were substituted for the words "by the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act I of 1905.

(The Sundarbans Act, 1905).¹

(22nd March 1905.)

An Act to provide for the abolition of the office of Commissioner in the Sundarbans.

Whereas it is expedient to abolish the Office of Commissioner in the Sundarbans ;

And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

55 & 56
Vict., c. 14.

It is hereby enacted as follows :—

1. This Act may be called the Sundarbans Act, 1905. Short title.

2. [Repeal of enactments.] *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).*

3. All the powers and functions heretofore vested in, and exercised by, the Commissioner in the Sundarbans in any district shall henceforth be vested in, and exerciseable by, the Collector of that district. Collectors to exercise powers and functions of Commissioner in the Sundarbans.

4. In every written instrument relating to land in the Sundarbans executed prior to the commencement of this Act all references to " the Commissioner in the Sundarbans " shall be construed as referring to the Collector of the district in which the land or any part of it is situated. Construction of references in written instrument.

¹LEGISLATIVE PAPERS.—For statement of Objects and Reasons, see *Calcutta Gazette*, 1905, Pt. IV, p. 6 ; for Report of Select Committee, see *ibid*, Pt. IV, p. 9 ; and for Proceedings in Council, see *ibid*, 1904, Pt. IVA, p. 155 ; see *ibid*, 1905, Pt. IVA, pp. 10, 23 and 30.

LOCAL EXTENT.—This extends only to the Sundarbans.

Bengal Act III of 1905.

(The Bengal Smoke-nuisances Act, 1905.)¹

(3rd May 1905.)

An Act to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or fire-places in the town and suburbs of Calcutta and in Howrah and to provide for the extension thereof to other areas in Bengal.

Whereas it is expedient to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or fire-places in the town and suburbs of Calcutta and in Howrah and to provide for the extension thereof to other areas in Bengal².

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Smoke-nuisances Act, 1905 ; and Short title and extent.¹

(2) It extends in the first instance to—

- (a) the town of Calcutta, as defined in section 3 of the Calcutta Police Act, 1866 ;
- (b) the suburbs of Calcutta, as for the time being defined by notifications published under section 1 of the Calcutta Suburban Police Act, 1866 ; and
- (c) the station of Howrah, as described in the schedule to the Howrah Offences Act, 1857.

Ben. Act
IV of
1866.

Ben. Act
II of 1866.

XXI of
1857.

2. (1) The ³[Provincial Government] may, by notification published in the ⁴[*Official Gazette*] and in such other manner (if any) as the ³[Provincial Government] may determine, declare its intention to extend this Act to any specified area in Bengal other than the areas mentioned in section 1, sub-section (2) : Power to extend Act.

¹LOCAL EXTENT.—This Act extends to the town and suburbs of Calcutta and the station of Howrah, and may be extended to other areas in Bengal—see sections 1 and 2.

This Act has been extended by a notification issued under s. 2 (3) to all areas within the local limits of the Tollyganj, Garden Reach and South Suburban Municipalities, in the district of the 24 Parganas, other than the areas in which the Act is already in force by virtue of s. 1.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²This includes the present Province of Bengal and other territory.

³These words were substituted for the words " Local Government " by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words " *Calcutta Gazette* ", *ibid.*

[Ben. Act III]

(Sec. 3.)

Provided that, if a military cantonment is situated within any area to which it is proposed to extend this Act, no notification shall be published under this sub-section in respect of such area without the previous sanction of the ¹[Central Government].

(2) Any inhabitant of an area to which it is proposed to extend this Act may, if he objects to such extension, submit his objection in writing to the ²[Provincial Government] within a period of three months from the publication of the said notification in the ³[Official Gazette].

(3) At any time after the expiration of the said period, and after considering the objections (if any) submitted under sub-section (2), the ²[Provincial Government] may, by notification in the ³[Official Gazette], extend this Act to the said area.

Definitions.

3. In this Act,—

⁴[(1) “furnace” means any furnace or fireplace used—

(a) for working engines by steam, or

(b) for any other purpose whatsoever :

Provided that no furnace or fireplace—

(i) used for the burning of the dead, or

(ii) used in a private house for *bona fide* domestic purposes other than the purpose specified in clause (a),

shall be deemed to be a furnace or fireplace within the meaning of this Act ;]

(2) “Inspector” means a Chief Inspector of Smoke-nuisances, or an Assistant Inspector of Smoke-nuisances, appointed under this Act ;

(3) “the Commission” means the Bengal Smoke-nuisances Commission constituted under this Act ;

(4) the expression “owner,” when used with reference to a furnace, includes any agent or hirer using the furnace, and any foreman or other person superintending the working of the furnace ; and

¹These words were substituted for the words “Governor General in Council”, by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) order, 1937.

²See foot-note 3 on p. 219, *ante*.

³See foot-note 4 on p. 219, *ante*.

⁴Clause (1) was substituted for the original clause by s. 2 of the Bengal Smoke-nuisances (Amendment) Act 1916 (Ben. Act I of 1916).

of 1905.]

(Secs. 4, 5.)

Act V of
1898.

(5) "Magistrate" means a Presidency Magistrate, a Magistrate of the first class or a Bench of Magistrates exercising first class powers under the Code of Criminal Procedure, ¹[1898].

4. (1) The ²[Provincial Government] shall, by notification in the ³[*Official Gazette*], constitute a Commission, to be called the Bengal Smoke-nuisances Commission, to supervise and control the working of this Act. Constitution
of Commission.

(2) The said Commission shall consist of a President and so many other members as the ²[Provincial Government] may determine.

(3) ⁴[Not more than one-half of the members (including the President)] shall be officials nominated by the ²[Provincial Government]; and the remainder shall be non-officials nominated, in such manner as the ²[Provincial Government] may direct, by bodies or associations whose interests are likely to be affected by this Act.

(4) Subject to the provisions of sub-section (3), all members of the Commission shall be appointed, and all vacancies in the Commission shall, as occasion requires, be filled up by the ²[Provincial Government] by notification in the ³[*Official Gazette*].

(5) No act done by the Commission shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Commission.

5. (1) The ²[Provincial Government] may, by notification in the ³[*Official Gazette*], appoint a Chief Inspector of Smoke-nuisances and so many Assistant Inspectors of Smoke-nuisances as it may think fit. Appointment
of Inspectors.

(2) Every Assistant Inspector appointed under sub-section (1) shall be subordinate to the Chief Inspector, and all Inspectors shall be subordinate to, and subject to the control of, the Commission.

⁵(3) Every Inspector appointed under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

¹This figure was inserted by the Bengal Repealing and Amending Act, 1938 (Ben. Act 1 of 1939).

²See foot-note 3 on p. 219, *ante*.

³See foot-note 4 on p. 219, *ante*.

⁴These words were substituted for the words "one-half of the members (exclusive of the President)" by s. 3 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

⁵Sub-section (3) was inserted by s. 4 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

(Sec. 6.)

Power to prohibit the erection or use of kilns or furnaces, or the manufacture of coke, in specified areas.

6. (1) The ¹[Provincial Government] may, by notification in the ²[Official Gazette], prohibit, within any specified area,—

- ³(a) the erection or use of any specified class of brick, tile or lime-kilns, or,] ⁴[clamps for making bricks, or]
- (b) the erection ⁵[or use] of furnaces to be used for the calcining or smelting of ores or minerals, or for the casting, puddling or rolling of iron or other metals, or for the conversion of pig-iron into wrought-iron, or
- (c) the manufacture of coke, in ovens, or with special appliances, or
- (d) the making of coke without ovens or special appliances :

Provided that where, prior to the issue of such notification, a license has been granted by the Chairman of the Calcutta Corporation under the provisions of Chapter XXXIII of the Calcutta Municipal Act, 1899,⁶ for the erection of a furnace to be used for any of the purposes mentioned in clauses (a) and (b), or for the manufacture of coke as described in clauses (c) and (d), such notification shall not affect such furnace or such manufacture.

Ben. Act
III
of 1899.

(2) If any kiln ⁷[clamp] or furnace be erected ⁵[or used] in contravention of any notification issued under sub-section (1), clause (a) or clause (b), the owner thereof shall be liable to fine which may extend to two hundred and fifty rupees.

¹See foot-note 3 on p. 219, *ante*.

²See foot-note 4 on p. 219, *ante*.

³Clause (a) was substituted for the original clause by s. 5 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

⁴These words were added by s. 2 of the Bengal Smoke-nuisances (Amendment) Act, 1923 (Ben. Act IV of 1923).

⁵These words were inserted by s. 5 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

⁶Ben. Act III of 1899 has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923) and this reference should now be construed as a reference to the corresponding chapter of the latter Act—see s. 10 of the Bengal General Clauses Act, 1899 (Ben. Act I of 1899).

⁷This word was inserted by s. 2 of the Bengal Smoke-nuisances (Amendment) Act, 1923 (Ben. Act IV of 1923).

of 1905.]

(Sec. 6.)

(3) If any person manufactures coke in contravention of any notification issued under sub-section (1), clause (c), he shall be liable to fine which may extend, on a first conviction, to two hundred and fifty rupees, and on any subsequent conviction to five hundred rupees.

¹(4) If any person makes coke in or upon any building or land in contravention of any notification issued under sub-section (1), clause (d),—

(a) such person, and

(b) the owner (if he knowingly permits the coke to be made by such person) or the occupier of such building or land

shall be jointly and severally liable to a fine which may extend, on a first conviction, to twenty-five rupees, and on any subsequent conviction to fifty rupees; and the coke so made may be seized by an Inspector pending the order of the Magistrate.

¹(5) In any prosecution under sub-section (4), the Magistrate may, besides imposing a fine as aforesaid, record an order directing the confiscation of any coke seized as in that sub-section provided; and, in such a case, it shall be lawful for the Commission to dispose of the same in such manner as the ²[Provincial Government] may, by rule made under section 10, prescribe.

¹(6) For the purposes of sub-section (4),—

(i) the expression “occupier” means any person for the time being paying, or liable to pay, to the owner the rent or any portion of the rent of the building or land in respect of which the word is used, and includes an owner living in, or otherwise using, his own building or land; and

(ii) the expression “owner” includes the person for the time being receiving the rent of any building or land or of any part of any building or land, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, or as a receiver, or who would so receive such rent if the building, land, or part thereof, were let to a tenant.

¹Sub-sections (4), (5) and (6) were substituted for the original sub-section (4) by s. 5 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

²See foot-note 3 on p. 219, *ante*.

(Secs. 7-8A.)

Power to
order
demolition of
kilns or
furnaces
erected
or used within
prohibited
areas.

7. (1) Whenever a Magistrate imposes a fine on any person under section 6, sub-section (2), for erecting ¹[or using] a kiln ²[,clamp] or furnace in contravention of any notification issued under section 6, sub-section (1), clause (a) or clause (b), he may by order direct such person to demolish the kiln ²[,clamp] or furnace within a period to be specified on the order.

(2) If any person fails to demolish any kiln ²[,clamp] or furnace within the period prescribed in any such order, or within such longer period as the Magistrate may, for special reason, allow, he shall be liable to fine which may extend to twenty rupees for every day thereafter during which such failure continues.

Penalty
when
smoke is
emitted to a
greater
extent
than is
permitted by
rules.

8. (1) If smoke be emitted from any furnace in greater density, or at a lower altitude, or for a longer time, than is permitted by rules made under this Act, the owner of the furnace shall be liable to fine which may extend, on a first conviction, to fifty rupees, on a second conviction to one hundred rupees, and on any subsequent conviction to two hundred rupees.

3* * * *

Submission of
plans and
penalty.

⁴8A. (1) After the commencement of the Bengal Smoke-nuisances (Amendment) Act, 1916—

Ben. Act I
of 1916.

(a) no furnace, flue or chimney shall be erected, and

(b) no furnace, flue or chimney, erected prior to the commencement of the said Act, shall be re-erected, altered or added to

otherwise than in accordance with plans approved by the Commission.

(2) In the event of any contravention of the provisions of sub-section (1), the owner of the furnace, flue or chimney, as the case may be, shall be liable to fine which may extend to one hundred rupees, and, if any such furnace, flue or chimney is used without the permission of the Commission, to a further penalty, not exceeding twenty rupees, for every day during which such wrongful use continues.

¹These words were inserted by s. 6 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

²This word was inserted by s. 2 of the Bengal Smoke-nuisances (Amendment) Act, 1923 (Ben. Act IV of 1923).

³Sub-section (2) was repealed by s. 7 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

⁴Section 8A was inserted by s. 8 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

of 1905.]

(Sec. 9.)

9. (1) An Inspector may, after giving reasonable notice Powers of
Inspectors.
in writing to the owner, manager, engineer or person in charge—

- (a) enter and inspect, during working-hours, any building or place which contains a furnace, and inspect such furnace ;
- (b) under the written authority of the Commission, use and test any appliance used for preventing the emission of smoke from any such furnace ; and
- (c) under the written authority of the Commission, direct that any such furnace be worked or stoked experimentally, during his visit to such building or place, in any manner which he may consider suitable for preventing or reducing the emission of smoke, but not so as to interfere with the business carried on in such building or place further than is necessary for the purposes of the experiment.

(2) If any owner of a furnace in respect of which a direction is given under clause (c) fails to secure compliance with such direction, he shall be liable to fine which may extend to one hundred rupees.

¹[(3) Notwithstanding anything contained in sub-section (1), the Commission, and, in any urgent case, the President may, by order in writing, (which shall be produced on demand to the owner, occupier, manager, engineer or person in charge,) authorize any Inspector to enter and inspect without notice and at any time by day or by night any building or place in which the Commission or the President, as the case may be, has reason to believe that a furnace exists or that coke is being made, and to inspect such furnace, building or place ;

Provided that if, in any such building, which is a private dwelling-house, there is an apartment in the actual occupancy of a woman who, according to custom, does not

¹Sub-section (3) was inserted by s. 9 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

(Sec. 10.)

appear in public, such Inspector shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing.]

¹(4) Whenever the President makes any order under sub-section (3), he shall, as soon thereafter as conveniently may be, report the fact to the Commission.

Rules.

10. (1) The ²[Provincial Government] may ³* * * after previous publication, make rules to carry out the objects of this Act.

(2) In particular, and without prejudice to generality of sub-section (1), such rules may—

- (a) regulate the transaction of business by the Commission ;
- (b) prescribe the powers and duties to be exercised and performed by the Commission and by Inspectors, respectively, and regulate the exercise and performance of those powers and duties ;
- (c) prescribe a scale for the purpose of determining the density of smoke ;
- (d) prescribe the density of smoke that may be emitted from a furnace ;
- (e) prescribe the time during which smoke of such density may be emitted from a furnace ;
- ⁴(f) regulate, with due regard to the safety of shipping, the emission of smoke from the furnaces of vessels ;]
- (g) prescribe the altitude below which smoke may not be emitted from a furnace ;
- (h) prescribe a procedure for the giving of warning to offenders before instituting a prosecution under this Act, and declare the minimum period which should be allowed to elapse in different classes of cases between the giving of such warning and the institution of a prosecution ; ⁵*

¹Sub-section (f) was inserted by s. 9 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

²See foot-note 3 on p. 219, *ante*.

³The words " with the previous sanction of the Governor General in Council, and " were repealed by s. 10 (a) of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

⁴Clause (f) was substituted for the original clause by s. 10 (b), of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916)

⁵The word " and " was repealed by s. 10 (c) of the Bengal-Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

of 1905.]

(Secs. 11-13.)

- (i) authorize the payment of a fee, not exceeding thirty-two rupees, to each or any member of the Commission attending a meeting of the Commission ;
- ¹(j) regulate the disposal of coke confiscated under section 6, sub-section (5) ; ²*
- ³(jj) prescribe a scale of fees for the examination and approval of plans, the inspection and testing, and the grant of permission for the working of furnaces, flues and chimneys and generally for the services of Inspectors ; and
- ¹(k) prescribe a procedure to give effect to the provisions of section 8A.

Ben. Act I
of 1899.

(3) The date to be specified in accordance with clause (3) of section 24 of the Bengal General Clauses Act, 1899, as that after which a draft of rules proposed to be made under this section will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(4) Any rule to be made under this Act shall, before it is published for criticism under sub-section (1), be referred to the Commission constituted under section 4, and the rule shall not be so published until the said Commission has reported as to the expediency of making the proposed rule and as to the suitability of its provisions.

(5) All rules made under this section shall be published in the *Official Gazette*.

11. A Magistrate may take cognizance of an offence against this Act only—

Cognizance of offences.

(a) upon a complaint made by, or with the written authority of, the Chief Inspector, and

(b) within a period of two months from the date of the Commission of the offence.

12. [*Disposal of fines.*] Omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

13. [*Repeal.*] Rep. by the Bengal Repealing and Amendment Act, 1938 (Ben. Act I of 1939).

¹These clauses (j) and (k) were inserted by s. 10 (d), of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Ben. Act I of 1916).

²The word " and " was omitted by s. 3 (a) of the Bengal Smoke-nuisances (Amendment) Act, 1923 (Ben. Act IV of 1923).

³Clause (jj) was inserted by s. 3 (b), *ibid*.

⁴See foot-note 4 on p. 219, *ante*.

Bengal Act VI of 1905.

[The Calcutta and Suburban Police (Superannuation Fund) Act, 1905.]¹

(27th December 1905.)

An Act to abolish the Calcutta and Suburban Police Superannuation Fund.

Whereas it is expedient to abolish the Calcutta and Suburban Police Superannuation Fund ;

It is hereby enacted as follows :—

1. This Act may be called the Calcutta and Suburban Police (Superannuation Fund) Act, 1905. **Short-title.**

2. [Repeal of enactments.] *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).*

3. All sums standing to the credit of the Calcutta and Suburban Police Superannuation Fund shall vest in His Majesty, to be applied, under rules made by the [Provincial Government] in this behalf, towards the grant of pensions or gratuities to members of the Police force of the town or suburbs of Calcutta. **Transfer and application of Calcutta and Suburban Police Superannuation Fund.**

THE SCHEDULE.

[*Enactments Repealed.*]

Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1905, Pt. IV, p. 28; for Proceedings in Council, see *ibid*, Pt. IVA, pp. 201, 202, 213 and 214.

LOCAL EXTENT.—Since this Act has no local extent clause and only effects the Calcutta and Suburban Police, it extends only to Calcutta and its Suburbs.

²These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act V of 1909.

(The Bengal Excise Act, 1909.)

CONTENTS.

CHAPTER I.

Preliminary.

Section.

1. Short title, extent and commencement.
2. Definitions.
3. (*Repealed.*)
4. Power to declare what shall be deemed to be "country liquor" and "foreign liquor," respectively.
5. Definition of retail and wholesale.
6. Saving of certain acts.

CHAPTER II.

Establishments, Control, Appeal and Revision.

7. Establishments, and delegation and withdrawal of powers.
8. Control, appeal and revision.

CHAPTER III.

Import, Export and Transport.

9. Restrictions on import.
10. Restriction on export or transport.
11. Power to prohibit import, export or transport.
12. Passes for import, export or transport.

CHAPTER IV.

Manufacture, Possession and Sale.

13. License required for manufacture.
14. Drawing of *tari* in notified areas.
15. Establishment of distilleries, breweries or warehouses.
16. License required for depositing or keeping intoxicant in warehouse or other place of storage.
17. Payment of duty on removal from distillery, brewery, warehouse or other place of storage.
18. Possession of intoxicants not obtained from a licensed vendor.
19. Possession of intoxicants generally.
20. License required for sale.
21. Manufacture and sale of liquor in or near cantonments.
22. Grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs.
23. Transfer of exclusive privilege.
24. Maintenance and use of measures, weights and instruments by licensed manufacturers and vendors.
25. Employment of children or women by licensed vendors.
26. Power to close shops temporarily.

CHAPTER V.

Duty.

Section.

- 27. Power to impose duty on import, export, transport and manufacture.
- 28. Ways of levying such duty.
- 29. Payment for grant of exclusive privilege.
- 29A. Saving for duties being levied at commencement of Part III of the Government of India Act, 1935.

CHAPTER VI.

Licenses, Permits and Passes.

- 30. Preparation of list of places for which it is proposed to grant licenses for the retail sale of spirit.
- 31. Publication of such list.
- 32. Time for preparation and publication of such list.
- 33. Submission of objections and opinions to Collector.
- 34. Grant of licenses by Collector, and submission of list, objections and opinions to Excise Commissioner.
- 35. Finality of decision of Excise Commissioner or Provincial Government.
- 36. Application of sections 39 to 35 to licenses for retail sale of intoxicants other than spirit.
- 37. Exemption of certain licenses from sections 30 to 36.
- 38. Fees for terms, conditions and form of, and duration of, licenses, permits and passes.
- 39. (*Repealed.*)
- 40. Counterpart agreement by licensee, and security or deposit.
- 41. Technical defects, irregularities and omissions.
- 42. Power to cancel or suspend license, permit or pass.
- 43. Power to withdraw licenses.
- 40. Surrender of license.
- 44A. Bar to right of renewal and to compensation.

CHAPTER VII.

Departmental Management or Transfer.

- 45. Power of Collector to take grants under management, or to transfer them.

CHAPTER VIII.

Offences and Penalties.

- 46. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.
- 47. Presumption as to offence where possession is not satisfactorily accounted for.
- 48. Penalty for altering or attempting to alter any denatured spirit.
- 48A. Presumption as to offence under section 48 in certain cases.
- 48B. Presumption as to any spirit which contains any denaturant.
- 49. Penalty for adulteration by licensed manufacturer or vendor or his servant.
- 50. Penalty for fraud by licensed manufacturer or vendor or his servant.

Section.

51. Penalty for certain unlawful acts of licensed vendors or their servants.
52. Penalty for possession of intoxicant in respect of which an offence has been committed.
53. Penalty for consumption in chemist's shop, etc.
54. Penalty for certain acts by licensee or his servants.
55. Import, export, transport, manufacture, sale or possession by one person on account of another.
56. Criminal liability of licensee for acts of servant.
57. Imprisonment under section 55 or section 56.
58. Penalty on Excise Officer making vexatious search, seizure, detention or arrest, or refusing duty, or being guilty of cowardice.
59. Penalty for offences not otherwise punishable.
60. Penalty for contempt of Court.
61. Penalty for attempt to commit offence.
62. Enhanced punishment after previous conviction.
63. What things are liable to confiscation.
64. Confiscation by Magistrate or Collector.
65. Power to compound offences and to release property liable to confiscation.

CHAPTER IX.**Detection, Investigation and Trial of Offences, and Procedure.**

66. Power to enter and inspect, and power to test and seize measures, etc.
67. Power to arrest without warrant, to seize articles liable to confiscation, and to make searches.
68. Power to issue warrant of arrest.
69. Power to issue search-warrant.
- 69A. Power of Collector or Magistrate to arrest or search without issuing a warrant
70. Power of Excise Officer to search without a warrant.
71. Information and aid to Excise Officers.
72. Duty of owners and occupiers of land and other persons to give notice of unlicensed manufacture.
73. Power to Collector and certain Excise Officers to investigate offences.
74. Powers and duties of Collector and certain Excise Officers investigating offences.
75. Security and bail.
76. Production of articles seized and persons arrested.
77. Custody by Police of articles seized.
78. Reports of arrests, seizures and searches.
79. Execution of Collector's warrant.
80. Maximum period of detention.
81. Application of certain provisions of the Code of Criminal Procedure, 1898.
82. Magistrates having jurisdiction to try offences.
83. Initiation of certain prosecutions.
84. Bar to transfer of trial on application of accused.

CHAPTER X.

Miscellaneous.

Section.

- 85. Power of Provincial Government to make rules.
- 86. Further power of Provincial Government to make rules.
- 87. (*Repealed*.)
- 88. Publication and effect of rules and notifications.
- 89. Recovery of dues.
- 90. Power of Provincial Government to exempt intoxicants from provisions of Act.
- 91. Bar of certain suits.
- 92. Limitation of suits and prosecutions.
- 92A. Bar to application of section 261 of the Bengal Municipal Act, 1884.
- 93. (*Repealed*.)

Schedule—*Repealed*.

Bengal Act V of 1909.

(The Bengal Excise Act, 1909).¹

(8th September 1909.)

An Act to consolidate and amend the Excise Law in Bengal.

WHEREAS it is expedient to consolidate and amend the law in Bengal relating to the import, export, transport, manufacture, possession and sale of ²[alcoholic liquor] and intoxicating drugs;

AND WHEREAS, the Acts mentioned in Part I of the Schedule having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

55 & 56
Vict., c. 14.

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Excise Act, 1909; Short title,
extent and
commencement.

(2) It extends to the whole of Bengal; and

(3) It shall come into force on such date³ as the ⁴[Provincial Government] may, by notification, direct.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) “beer” includes ale, stout, porter and all other fermented liquor made from malt;

⁵[(1A) “Bengal” means the Presidency of Fort William in Bengal.]

* * * * *

(3) to “bottle” means to transfer liquor from a cask or other vessel to a bottle or other receptacle for the purpose of sale, whether any process of rectification be employed or not; and includes re-bottling;

¹LOCAL EXTENT.—This Act extends to the whole of the present Province of Bengal, except the Chittagong Hill tracts—see s. 1 (2) of this Act as well as ss. 2 and 3 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²These words were substituted for the words “intoxicating liquor” by s. 4 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

³The 1st December, 1909—see *Calcutta Gazette*, 1909, Pt. I, 1710.

⁴Those words were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵Clause (1A) was inserted by s. 6(1) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁶Clause (2) was repealed by s. 5, *ibid.*

(Chapter I.—Preliminary.—Sec. 2.)

(a) the area within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal ;

Ben. Act
11 of
1866.

(c) any other areas, in the vicinity of those referred to in sub-clauses (a) and (b), which the [Provincial Government] may, by notification, declare to be included in the "Calcutta district ;"

*

(i) in the Calcutta district, the person appointed under section 7, clause (b), to exercise all the powers and to perform all the duties of the Collector in that district, and

(ii) elsewhere, the chief officer in charge of the revenue administration of a district :

³(6) "denaturant" means any substance prescribed by rule made in this behalf under clause (3) of section 86, for admixture with spirit in order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine, or in any other way whatsoever;

³(6a) to “denature” means to mix spirit with one or more denaturants in such manner as may be prescribed by rule made in this behalf under clause (3) of section 86, and “denatured spirit” means spirit so mixed;

⁴(7) “excisable article” means—

(a) any alcoholic liquor for human consumption; or

(b) any intoxicating drug; or

(c) any medicinal or toilet preparation containing alcohol.

¹See foot-note 4 on p. 235, *ante*.

²Clause (1A) was omitted by s. 40 of and Sch. II to the Dangerous Drugs Act, 1930 (II of 1930).

³Clauses (6) and (6a) were substituted for the original clause (6) by s. 6(3) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

*Clause (7) was substituted for the original clause (7) by Sch. IV of the Government of India (Adaptation of India Laws) Order, 1937.

of 1909.]

(Chapter I.—Preliminary.—Sec. 2.)

26 Geo. V.
c. 2.

¹(7a) “excise duty” and “countervailing duty” mean any such excise duty or countervailing duty, as the case may be, as is mentioned in item 40 of List II in the Seventh Schedule to the Government of India Act, 1935 ;

(8) “Excise Commissioner” means the officer appointed under section 7, clause (a);

(9) “Excise Officer” means the Collector or any officer or other person appointed or invested with powers under section 7;

(10) “excise-revenue” means revenue derived or derivable from any duty, fee, tax, payment (other than a fine imposed by a Criminal Court) or confiscation imposed or ordered under this Act or any other law for the time being in force relating to liquor or intoxicating drugs;

²(11) “export” means to take out of Bengal otherwise than across a customs frontier as defined by the Central Government ;

²(12) “import” (except in the phrase “import into British India”) means to bring into Bengal otherwise than across a customs frontier as defined by the Central Government.

³(12a) “intoxicant” means any liquor or intoxicating drug.

⁴(13) “intoxicating drug” means—

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa* L.), including all forms known as *bhang*, *siddhi* or *ganja*;

(ii) *charas*, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;

(iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and

⁵(iv) any other intoxicating or narcotic substance or any fermenting agent which the [Provincial Government] may specify in this behalf by notification, such substance or agent not being opium, coca-leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930.

II of 1930.

¹Clause (7a) was inserted, by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Clauses (11) and (12) were substituted for the original clauses (11) and (12), *ibid.*

³Clause (12a) was inserted, *ibid.*

⁴Clause (13) was substituted for the original clause (13) by s. 40 of the Dangerous Drugs Act, 1930 (II of 1930).

⁵Sub-clause (iv) was substituted by s. 2 of the Bengal Excise (Amendment) Act, 1934 (Ben. Act IX of 1934).

⁶See foot-note 4 on p. 235, *ante*.

(Chapter I.—Preliminary.—Sec. 3.)

(14) "liquor" means ¹[liquid consisting of or containing alcohol,] and includes spirits of wine, spirit, wine, *tari*, *pachwai* beer, ²* * * * and any substance which the ³[Provincial Government] may, by notification, declare to be liquor for the purposes of this Act ;

(15) "manufacture" includes—

(I) every process, whether natural or artificial, by which any ⁴[intoxicant] is produced or prepared (including the tapping of *tari*-producing trees and the drawing of *tari* from trees.)

(II) re-distillation, and

(III) every process for the rectification, flavouring, blending or colouring of liquor, ⁵[or for the reduction of liquor for sale ;]

(16) "*pachwai*" means fermented rice, millet or other grain, whether mixed with any liquid or not, and any liquid obtained therefrom, whether diluted or undiluted, but does not include beer ;

(17) "place" includes building, house, shop, booth, vessel raft, ⁶[vehicle] and tent ;

(18) expressions referring to "sale" include any transfer otherwise than by way of gift ;

(19) "spirit" means any liquor containing alcohol obtained by distillation, whether it is denatured or not ;

(20) "*tari*" means fermented or unfermented juice drawn from any cocoanut, palmyra, date or other kind of palm tree ; and

(21) "transport" means to remove from one place to another within Bengal.

3. [Provision supplemental to the definition of "intoxicating drug."] Rep by s. 40 of and Sch. II to the Dangerous Drugs Act, 1930 (II of 1930).

¹These words were substituted for the words "intoxicating liquor" by s. 6(5)(a) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²The words "all liquid consisting of or containing alcohol" were repealed by s. 6(5)(b), *ibid*.

³See foot-note 4 on p. 235, *ante*.

⁴This word was substituted for the words "excisable article" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were added by s. 6(6) of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁶This word was inserted by s. 6 (7), *ibid*.

of 1909.]

(Chapter I.—Preliminary.—Chapter II.—Establishments,
Control, Appeal and Revision—Secs. 4-7.)

4. The ¹[Provincial Government] ^{2*} * * * * * Power to declare
may, by notification, declare what, for the purposes of this Act what shall be
or any portion thereof, shall be deemed to be “country liquor” deemed to be
liquor” and “foreign liquor”, respectively : “country liquor”
and “foreign
liquor”
respectively.

3* * * *

5. (1) The ¹[Provincial Government] may, by notification, Definition of
declare with respect either to the whole of Bengal or to any retail and
specified local area, and as regards purchasers generally or wholesale,
any specified class of purchasers, and either generally or
for any specified occasion, what quantity of any ⁴[intoxicant]
shall, for the purposes of this Act, be the limit of a retail
sale.

(2) The sale of any ⁴[intoxicant] in any quantity in excess
of the quantity declared in respect thereof under sub-section
(1) shall be deemed to be a sale by wholesale.

6. (1) Nothing contained in this Act shall affect the Saving of
provisions of— certain Acts.

Ben. Act II
of 1866.

Ben. Act
IV of 1866.

VIII of
1878.

II of 1924.

XXXII of
1934.

(a) the Calcutta Suburban Police Act, 1866, or

(b) the Calcutta Police Act, 1866, or

(c) the Sea Customs Act, 1878, or

(d) the Cantonments Act, ⁵[1924], or

(e) the Indian Tariff Act ⁶[1934].

(2) All references to Act XXI of 1856 in the said Calcutta
Suburban Police Act, 1866, and all references to Act XI of
1849 in the said Calcutta Police Act, 1866, shall be construed
as references to this Act.

CHAPTER II.

ESTABLISHMENTS, CONTROL, APPEAL AND REVISION.

7. (1) The administration of the Excise Department Establishments
and the collection of the excise-revenue within a district and delegation
shall ordinarily be under the charge of the Collector. and withdrawal
of powers.

¹See foot-note 4 on p. 235, *ante*.

²The words “with the previous sanction of the Government of India” were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

³The proviso was omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴See foot-note 4 on p. 238, *ante*.

⁵This figure was substituted for the figure “1889” by the First Bengal Repealing and Amending Act, 1938 (Ben. Act. I of 1939).

⁶This figure was substituted for the figures and words “1894 (except section 6 thereof)”, *ibid*.

[Ben. Act V

(Chapter II.—Establishments, Control, Appeal and Revision.

—Sec. 7.)

(2) The ¹[Provincial Government] may, by notification applicable to the whole of Bengal or to any specified local area,—

- (a) appoint an officer who shall, subject to such control as the ¹[Provincial Government] may direct, have the control of the administration of the Excise Department and the collection of the excise-revenue ;
- (b) appoint any person to exercise all or any of the powers and to perform all or any of the duties, conferred and imposed on a Collector by or under this Act, either concurrently with, or in subordination to, or to the exclusion of, the Collector, and subject to such control as the ¹[Provincial Government] may direct ;
- (c) appoint officers of the Excise Department, of such classes, and with such designations, powers and duties, as the ¹[Provincial Government] may think fit ;
- (d) order that all or any of the powers and duties assigned by or under this Act to any officer appointed under clause (c) of this ²[sub-section] shall be exercised and performed by any ³[Servant of the Crown] or any other person ;
- (e) delegate to ⁴* * the Commissioner of a Division or the Excise Commissioner all or any of the powers conferred upon the ¹[Provincial Government] by or under this Act, except the power conferred by section 85 to make rules ;
- (f) withdraw from any officer or person all or any of the powers or duties conferred or imposed upon him by or under this Act ; and
- (g) permit the delegation by ⁴* * the Commissioner of a Division, the Excise Commissioner or the Collector, to any persons or classes of persons specified in such notification, of any powers conferred or duties imposed upon ⁵* * him by or under this Act.

¹See foot-note 4 on p. 235, *ante*.

²This word was substituted for the word " section " by the Bengal Repealing and (Amendment) Act, 1938 (Ben. Act I of 1939).

³These words were substituted for the words " Government officer " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words " the Board " were repealed by s. 5 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁵The words " it or " were repealed, *ibid*.

of 1909.]

(Chapter II.—Establishments, Control, Appeal and Revision.

—Chapter III.—Import, Export and Transport.—Secs 8, 9.)

8. (1) The Collector shall, in all proceedings under this Act, be subject to the control of the Excise Commissioner, and shall, in such matters as the ¹[Provincial Government] may direct, be subject also to the control of the Commissioner of the Division. Control, appeal and revision.

(2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rule made under section 85, clause (c).

(3) The ¹[Provincial Government] may revise any order passed by the Collector, the Excise Commissioner or the Commissioner of a Division :

²Provided that the powers of the Provincial Government under this sub-section shall in revenue cases be exercised by the tribunal to be appointed under section 296(2) of the Government of India Act, 1935.

26 Geo. V,
c 2.

CHAPTER III.

IMPORT, EXPORT AND TRANSPORT.

9. (1) No ³[intoxicant] shall be imported unless— Restrictions on import.

(a) the ¹[Provincial Government] has given permission, either general, or special, for its import ;

(b) such conditions (if any) as the ¹[Provincial Government] may impose have been satisfied ; and

(c) the duty (if any) ⁴[payable under Chapter V] has been paid, or a bond has been executed for the payment thereof.

(2) Sub-section (1) shall not apply to any article which has been imported into British India ⁵[if—

(i) the duty (if any) imposed on such importation under the Indian Tariff Act, ⁶[1934] or the Sea Customs Act, 1878, has been paid, or

(ii) a bond has been executed for the payment of such duty.]

XXXII of
1934.
VIII of
1878.

¹See foot-note 4 on p. 235, *ante*.

²The proviso was inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 4 on p. 238, *ante*.

⁴These words were substituted for the words and figure "imposed under section 27 " by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

⁵These words enclosed in square brackets were substituted for the words " and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1874," by s. 7 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁶The figure " 1934 " was substituted for the figure " 1894 " by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

[Ben. Act V

(Chapter III.—Import, Export and Transport.—
Secs. 10-12.)

(3) Clauses (a) and (b) of sub-section (1) shall not apply to liquor manufactured in British India and declared under section 4 to be foreign liquor.

Restriction on
export or
transport.

10. No ¹[intoxicant] shall be exported or transported unless—

- (a) the duty (if any) ²[payable under Chapter V], or
- (b) if the article was previously imported, the duty (if any) imposed on its importation under the Indian

XXXII of
1934.
VIII of
1878.

Traiff Act, ³[1934] or the Sea Customs Act, 1878,

has been paid, or a bond has been executed for the payment thereof :

Provided that the ⁴[Provincial Government] may, subject to such conditions (if any) as it thinks fit to impose, exempt any ¹[intoxicant] from the provisions of this section.

Power to
prohibit
import,
export or
transport.

11. The ⁴[Provincial Government] may, by notification,—

- (a)⁵ * * * * * ⁶prohibit the
import or export of any ¹[intoxicant] into or
from Bengal or any part thereof, or
- (b) prohibit the transport of any ¹[intoxicant] :

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Passes for
import, export
or transport.

12. (1) No ¹[intoxicant] exceeding such quantity as the ⁴[Provincial Government] may prescribe by notification either generally or for any specified local area, shall be imported, exported or transported, except under a pass :

Provided that, in the case of duty-paid foreign liquor other than denatured spirit, such passes shall be dispensed with unless the ⁴[Provincial Government], by notification, otherwise directs with respect to any local area.

¹See foot-note 4 on p. 238, *ante*.

²See foot-note 4 on p. 241, *ante*.

³See foot-note 6 on p. 241, *ante*.

⁴See foot-note 4 on p. 235, *ante*.

⁵The words "with the previous sanction of the Government of India" were omitted by the Devolution Act, 1920 (XXXVIII of 1920.)

⁶The proviso was omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1909.]

(Chapter IV.—*Manufacture, Possession and Sale.*—Sec. 13.)

(2) The passes required by sub-section (1) may be granted by the Collector.

(3) Such passes may be either general for definite periods and particular kinds of ¹[intoxicants], or special for specified occasions and particular consignments only.

CHAPTER IV.

Manufacture, Possession and Sale.

13. (a) No ²[intoxicant] shall be manufactured,

(b) no hemp plant (*Cannabis sativa*) shall be cultivated,

(c) no portion of the hemp plant (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced shall be collected,

(d) no liquor shall be bottled for sale,

(e) no distillery or brewery shall be worked, and

(f) no person shall use, keep or have in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any ²[intoxicant] other than *tari*,

License
required for
manufacture.

except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector :

Provided that any *tari*-producing tree may be tapped, and *tari* may be drawn from any tree, without a license under this section, by the person in possession of the tree—

(i) for the purpose of being used in the manufacture of *gur* or molasses, or

³[(ia) for the purpose of being used solely for the preparation of food for domestic consumption, and not—

(I) as an intoxicant, or

(II) for the preparation of any intoxicating article or

(III) for the preparation of any article for sale, or]

(ii) up to a limit of four seers, for the domestic consumption of the said person.

¹This word was substituted for the words "excisable articles" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 4 on p. 238, *ante*.

³This proviso (ia) was inserted by s. 8 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

(Chapter IV.—*Manufacture, Possession and Sale*—
Secs. 14, 15.)

Drawing of
tari in
notified
areas.

14. (1) Notwithstanding anything contained in the proviso to section 13,—

- (a) no *tari*-producing tree shall be tapped, and
- (b) no *tari* shall be drawn from any tree,

in any local area specified in this behalf by the ¹[Provincial Government] by notification, except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector :

(2) Provided that, when any exclusive privilege of manufacturing *tari* has been granted under section 22, the ¹[Provincial Government] may declare that the written permission given by the grantee to draw *tari* shall have the same force and effect as a license granted by the Collector under sub-section (1) of this section :

(3) Provided also that, in any local area specified by notification under sub-section (1), the ¹[Provincial Government] may, by notification, declare that that sub-section shall not apply to trees tapped or *tari* drawn under such special conditions as the ²[Excise Commissioner] may prescribe.

Establishment
of distilleries,
breweries or
warehouses.

15. (1) The Excise Commissioner may,—

- (a) subject to any restrictions imposed by the ¹[Provincial Government], establish, or authorize the establishment of, distilleries or breweries, in which liquor may be manufactured under a license granted under section 13 ;
- (b) discontinue any such distillery or brewery ;
- (c) establish, or authorize the establishment of, warehouses, wherein any ³[intoxicant] may be deposited and kept without payment of duty ; and
- (d) discontinue any such warehouse.

(2) No distillery, brewery or warehouse as aforesaid shall be established except by, or under the authority of, the Excise Commissioner.

¹See foot-note 4 on p. 235, *ante*.

²These words were substituted for the word " Board " by s. 5 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

³See foot-note 4 on p. 238, *ante*.

of 1909.]

(Chapter IV.—*Manufacture, Possession and Sale.*—
Secs. 16-18.)

16. No person shall, except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector, deposit or keep any ¹[intoxicant] in any warehouse or other place of storage established, authorized or continued under this Act.

License required for depositing or keeping intoxicant in warehouse or other place of storage.

17. No ¹[intoxicant] shall be removed from any distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, unless the duty (if any) ²[payable under Chapter V] has been paid or a bond has been executed for the payment thereof.

Payment of duty on removal from distillery, brewery, warehouse or other place of storage.

18. (1) No person shall have in his possession any ¹[intoxicant] which has not been obtained from a licensed vendor of the same.

Possession of intoxicants not obtained from a licensed vendor.

(2) Sub-section (1) shall not apply to—

- (a) any ¹[intoxicant] lawfully deposited or kept in a distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, or
- (b) any ¹[intoxicant] lawfully in the possession of a licensed vendor of the same, or
- (c) any ¹[intoxicant] in the possession of a person who has lawfully imported it, or who is authorized by the Collector to possess it, or
- (d) any foreign liquor in the possession of any common carrier or warehouseman as such, or purchased at a sale authorized by clause (a) of proviso (3) to section 20, or
- (e) *tari* intended to be used in the manufacture of *gur* or molasses, or
- (f) *tari* intended to be used in the manufacture of bread by a person holding a permit to use *tari* for that purpose, or
- ³[(ff) *tari* intended to be used solely for the preparation of food for domestic consumption, and not—
- (i) ⁴[as an intoxicating article], or

¹See foot-note 4 on p. 238, *ante*.

²These words were substituted for the words and figure “imposed under section 27” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Clause (ff) was inserted by s. 9 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁴These words were substituted for the words “as an intoxicant” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter IV.—*Manufacture, Possession and Sale.*—
Sec. 19.)

- (ii) for the preparation of any intoxicating article, or
- (iii) for the preparation of any article for sale, or]
- (g) *tari*, up to a limit of four seers, when in the possession of the person possessing the tree from which it was drawn and intended to be used for his domestic consumption, or
- (h) intoxicating drugs in the possession of any person licensed to cultivate or collect the plants from which such drugs were produced, when such possession is in accordance with the conditions of his license.

Possession of
intoxicants
generally.

19. (1) No person not being licensed to manufacture, cultivate, collect or sell any ¹[intoxicant] shall have in his possession any quantity of any ¹[intoxicant] in excess of such quantity as the ²[Provincial Government] has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

(2) Sub-section (1) shall not apply to—

- (a) any foreign liquor (other than denatured spirit) which is in the possession of any common carrier or warehouseman as such, or
- (b) any foreign liquor which has been purchased by any person for his *bona fide* private consumption and not for sale, or
- (c) *tari* intended to be used in the manufacture of *gur* or molasses, ³[or]

⁴[(d) *tari* intended to be used solely for the preparation of food for domestic consumption, and not—

- (i) ⁵[as an intoxicating article], or
- (ii) for the preparation of any intoxicating article, or
- (iii) for the preparation of any article for sale.]

(3) A licensed vendor shall not have in his possession at any place other than that authorized by his license any quantity of any ¹[intoxicant] in excess of such quantity as the ²[Provincial Government] has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

¹See foot-note 4 on p. 238, *ante*.

²See foot-note 4 on p. 235, *ante*.

³This word was inserted by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁴Clause (d) was inserted by s. 10 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁵See foot-note 4 on p. 245, *ante*.

of 1909.]

(Chapter IV.—*Manufacture, Possession and Sale.*—
Sec. 20.)

(4) Notwithstanding anything contained in the foregoing sub-sections, the ¹[Provincial Government] may, by notification, prohibit the possession by any person or class of persons, either in Bengal or in any specified local area, of any ²[intoxicant] either absolutely, or subject to such conditions as it may prescribe.

20. No ²[intoxicant], and no portion of the hemp plant (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced, shall be sold except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector :

License required for sale.

Provided as follows :—

(1) a license for sale in more than one district shall be granted only by the Excise Commissioner ³[or by a Collector specially authorized in that behalf by the Excise Commissioner ;]

⁴[(1a) a license for sale granted under the Excise law in force in any other Province may, or such conditions as may be determined by the Excise Commissioner, be deemed to be a license granted under this Act ;]

(2) a cultivator or owner of any hemp plant (*Cannabis sativa*) may sell, without a license, those portions of the plant from which an intoxicating drug can be manufactured or produced, to any person licensed under this Act to deal in the same, or to any officer whom the Excise Commissioner may authorize to purchase or receive the same ;

(3) no license shall be required for any of the following sales, namely :—

(a) the sale of foreign liquor lawfully procured by any person for his private use—when such sale is made by such person himself or on his behalf upon his quitting a station, or on behalf of his representatives in interest after his decease ;

(b) the sale of *tari*, ⁵[lawfully possessed] by a person in possession of the tree from which it was drawn, to a person licensed under this Act to manufacture or sell *tari* ;

(c) the sale of *tari* ⁵[lawfully possessed and] intended to be used in the manufacture of *gur* or molasses ;
or

¹See foot-note 4 on p. 235, *ante*.

²See foot-note 4 on p. 238, *ante*.

³These words were added by s. 11 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁴Proviso (1a) was inserted by s. 11, *ibid*.

⁵These words were inserted by s. 11, *ibid*.

[Ben. Act V

(Chapter IV.—*Manufacture, Possession and Sale.*—
Secs. 21-23.)

- (d) the sale of *tari* ¹[lawfully possessed and] intended to be used in the manufacture of bread to a person holding a permit to use *tari* for the purpose of making bread; ²[or
- (e) the sale of *tari* lawfully possessed and intended to be used solely for the preparation of food for domestic consumption and not—
 - (i) ³[as an intoxicating article], or
 - (ii) for the preparation of any intoxicating article, or
 - (iii) for the preparation of any article for sale.]

Manufacture and sale of liquor in or near cantonments.

21. Within the limits of any military cantonment, and within such distance from those limits as the ⁴[Central Government] may in any case prescribe, no license for the manufacture or sale of liquor shall be granted, except with the previous consent of the Commanding Officer.

Grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs.

22. (1) The ⁵[Provincial Government] may grant to any person, on such conditions and for such period as it may think fit, the exclusive privilege—

- (a) of manufacturing, or supplying by wholesale, or
- (b) of manufacturing, and supplying by wholesale, or
- (c) of selling, by wholesale or retail, or
- (d) of manufacturing or supplying by wholesale and selling retail, or
- (e) of manufacturing and supplying by wholesale and selling retail,

any country liquor or intoxicating drug within any specified local area :

Provided that public notice shall be given of the intention to grant any such exclusive privilege, and that any objections made by any person residing within the area affected shall be considered before an exclusive privilege is granted.

(2) No grantee of any privilege under sub-section (1) shall exercise the same unless or until he has received a license in that behalf from the Collector ⁶[or the Excise Commissioner.]

Transfer of exclusive privilege.

23. (1) A grantee of an exclusive privilege under section 22 shall not let or assign the same or any portion thereof unless he is expressly authorized, by a condition made under that section, to do so.

¹These words were inserted by s. 11, *ibid.*

²These words were added by s. 11, *ibid.*

³See foot-note 4 on p. 245, *ante.*

⁴These words were substituted for the words " Local Government " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵See foot-note 4 on p. 235, *ante.*

⁶These words were added by s. 12 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

of 1909.]

(Chapter IV.—*Manufacture, Possession and Sale.*—
Secs. 24, 25.)

(2) Such letting or assignment shall be made only to a person approved by the Collector or (if the letting or assignment extends to more than one district) the Excise Commissioner.

(3) The lessee or assignee shall not exercise any rights as such unless and until the Collector has, upon his application, granted him a license to do so.

24. Every person who manufactures or sells any ¹[intoxicant] under a license granted under this Act—

Maintenance and use of measures, weights and instruments by licensed manufacturers and vendors.

(a) shall supply himself with such measures, weights and instruments as the Excise Commissioner may prescribe, and shall keep the same in good condition; and

(b) when such measures, weights and instruments have been so prescribed, shall, on the requisition of any Excise Officer duly empowered by the Collector in this behalf, measure, weigh or test any ¹[intoxicant] in his possession, at such time and in such manner as such officer may require.

25. (1) No person who is licensed to sell foreign liquor or country spirit for consumption on his premises shall,

Employment of children or women by licensed vendors.

during the hours in which such premises are kept open for business,

employ or permit to be employed, either with or without remuneration, any child under the age of fourteen years, in any part of such premises in which such liquor or spirit is consumed by the public.

(2) No person who is licensed to sell foreign liquor for consumption on his premises shall, without the previous written permission of the ²[Excise Commissioner],

during the hours in which such premises are kept open for business,

employ or permit to be employed, either with or without remuneration, any woman,

in any part of such premises in which such liquor is consumed by the public.

(3) The ³[Provincial Government] may, by notification, declare that sub-section (2) shall apply also, in any specified area, to persons licensed to sell country spirit for consumption on their premises.

(4) Every permission granted under sub-section (2) shall be endorsed on the license, and may be modified or withdrawn.

¹See foot-note 4 on p. 238, *ante*.

²These words were substituted for the word "Board" by s. 5 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

³See foot-note 4 on p. 235, *ante*.

[Ben. Act V

(Chapter IV.—*Manufacture, Possession and Sale*.—
Chapter V.—*Duty*.—Secs. 26, 27.)

Power to close
shops
temporarily.

26. (1) The District Magistrate or a Sub-divisional Magistrate, or (in Calcutta) the Chief Presidency Magistrate or the Commissioner of Police, may, by notice in writing to the licensee require that any shop in which any ¹[intoxicant] is sold shall be closed at such times or for such period as such Magistrate or Commissioner of Police may think necessary for the preservation of the public peace.

(2) If any riot or unlawful assembly is apprehended or occurs in the vicinity of any shop in which any ¹[intoxicant] is sold, any Magistrate, or any Police Officer above the rank of constable, who is present, may require such shop to be kept closed for such period as he may think necessary.

(3) When any Magistrate or Police Officer makes a direction under sub-section (1) or sub-section (2), he shall forthwith inform the Collector of his action and his reason therefor.

CHAPTER V.

DUTY.

Power to impose
duty on import,
export, transport
and manufacture.

27. (1) ²[An excise duty or a countervailing duty, as the case may be,] at such rate or rates as the ³[Provincial Government] may direct may be imposed, either generally or for any specified local area, on—

- (a) any excisable article imported, or
- (b) any excisable article exported, or
- (c) any excisable article transported, or
- (d) any excisable article (other than *tari*) manufactured under any license granted in respect of clause (a) of section 13, or
- (e) any hemp plant (*Cannabis sativa*) cultivated, or any portion of such plant collected, under any license granted in respect of clause (b) or clause (c) of section 13, or
- (f) any excisable article manufactured in any distillery or brewery licensed, established, authorised or continued under this Act.

Explanation.—Duty may be imposed on any article under this sub-section at different rates according to the places to which such article is to be removed for consumption, or according to the varying strengths and quality of such article.

(2) A duty, at such rate or rates as the ³[Provincial Government] may direct, may be imposed, either generally or for any specified local area, on any *tari* drawn under any license granted under section 14, sub-section (1).

¹See foot-note 4 on p. 238, *ante*.

²These words were substituted for the words "A duty" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 4 on p. 235, *ante*.

of 1909.]

(Chapter V.—Duty.—Sec. 28.)

(3) Notwithstanding anything contained in sub-section (1),—

(i) duty shall not be imposed thereunder on any article which has been imported into British India¹[if—

- (i) the duty (if any) imposed on such importation under the Indian Tariff Act, ²[1934], or the Sea Customs Act, 1878, has been paid, or
- (ii) a bond has been executed for the payment of such duty :]

such duty :]

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28. Subject to any rules made under section 86, clause (12) any duty imposed under section 27 may be levied in any of the following ways :—

Ways of levying such duty.

(a) on an excisable article imported,—

- (i) by payment (upon or before importation) in Bengal or in the province or territory from which the article is brought, or
- (ii) by payment upon issue for sale from a warehouse established, authorized or continued under this Act ;

(b) on an excisable article exported,—

by payment in Bengal or in the province or territory to which the article is sent ;

(c) on an excisable article transported,—

- (i) by payment in the district from which the article is sent, or
- (ii) by payment upon issue for sale from a warehouse established, authorized or continued under this Act ;

(d) on intoxicating drugs manufactured, cultivated or collected,—

- (i) by a rate charged upon the quantity manufactured under a license granted in respect of the provisions of section 13, clause (a), or issued for sale from a warehouse established, authorized or continued under this Act, or

¹These words were substituted for the words “and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878,” by s. 7 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²See foot-note 6 on p. 241, *ante*.

³The word “and” which was repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), is omitted.

⁴Clause (ii) was omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

XXXII of
1934,
VIII of
1878.

[Ben. Act V

(Chapter V.—Duty.—Secs. 29, 29A.)

- (ii) by ¹[a rate assessed on the area covered by, or on the quantity or outturn of, the crop cultivated or collected under,] a license granted in respect of the provisions of section 13, clause (b) or clause (c) ;
- (e) on spirit or beer manufactured in any distillery or brewery licensed, established, authorized or continued under this Act,—
- (i) by a rate charged upon the quantity produced in or issued from the distillery or brewery, as the case may be, or issued for sale from a warehouse established, authorized or continued under this Act, or
- (ii) in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the ²[Provincial Government] may prescribe ; and
- (f) on *tari* drawn under a license granted under section 14, sub-section (I),—by a tax on each tree from which the drawing of *tari* is permitted :

Provided that, where payment is made upon the issue of an excisable article for sale from a warehouse, it shall be at the rate of duty in force on the date of issue of such article from such warehouse :

Provided also that no tax shall be levied in respect of any tree from which *tari* is drawn only for the manufacture of *gur* or molasses and under such special conditions as the ³[Excise Commissioner] may prescribe.

29. Instead of, or in addition to, any duty leviable under this Act, the ⁴[Provincial Government] may accept payment of a sum in consideration of the grant of any exclusive privilege under section 22.

⁵29A. (1) Until provision to the contrary is made by the Central Legislature the Provincial Government may continue to levy any duty to which this section applies which it was lawfully levying immediately before the commencement of Part III of the Government of India Act, 1935, under this chapter as then in force.

26 Geo.
V., G. 2.

¹These words were substituted for the words "an acreage rate levied on the cultivation or collection of the hemp plant (*Cannabis sativa*) under " by s. 13 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²See foot-note 4 on p. 235, *ante*.

³These words were substituted for the word "Board" by s. 5 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁴See foot-note 4 on p. 235, *ante*.

⁵Section 29A was inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Payment for
grant of
exclusive privi-
lege.

Saving
for duties
being
levied at
commence-
ment of
Part III
of the
Govern-
ment of
India Act,
1935.

of 1909.]

(Chapter V.—Duty.—Chapter VI.—Licenses, Permits and Passes.—Secs. 30, 31.)

(2) The duties to which this section applies are—

- (a) any duty on intoxicants which are not excisable articles within the meaning of this Act ;
- (b) any duty on an excisable article produced outside India and imported into the Province whether across a customs frontier as defined by the Central Government or not.

(3) Nothing in this section shall authorise the levy by the Provincial Government of any duty which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

CHAPTER VI.

LICENCES, PERMITS AND PASSES.

30. Before the expiration of every period for which existing licenses for the retail sale of spirit are in force, the Collector shall prepare a list, in a form prescribed by the ¹[Excise Commissioner,] showing what licenses it is proposed to grant for the retail sale of spirit, for consumption on the vendors' premises, for the next period of settlement.

Preparation of list of places for which it is proposed to grant licenses for the retail sale of spirit.

31. (1) The Collector shall—

- (a) cause to be conspicuously affixed upon the site of each shop referred to in the said list a notice to the effect that it is proposed to grant a license for the retail sale of spirit thereat, or in the vicinity, for the next period of settlement ;
- (b) if any site referred to in the said list is not at the time used for the retail sale of spirit, cause a notice to the effect that it is proposed to grant a license for the retail sale of spirit thereat, or in the vicinity, for the next period of settlement, to be proclaimed in the locality by beat of drum ;
- (c) send to the Chairman of each Municipality ²[or, in Calcutta, to the Chief Executive Officer of the Corporation] an extract reproducing so much of the said list as relates to shops in the Municipality ³[or in Calcutta, as the case may be] ; and
- (d) cause the said list, or any portion thereof, to be published in such other methods (if any) as may be prescribed by rule made under section 85, clause (j).

Publication of such list.

¹These words were substituted for the word " Board " by s. 5 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²These words were inserted by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³These words were inserted, *ibid*.

[Ben. Act V

(Chapter VI.—Licenses, Permits and Passes.—Secs. 32, 33.)

(2) When an extract is sent to the Chairman of any Municipality ¹[or to the Chief Executive Officer of the Corporation of Calcutta] under clause (c) of sub-section (1), he shall—

- (i) cause a copy of the extract to be conspicuously affixed at the central office of the Municipality ¹[concerned or of the Corporation of Calcutta, as the case may be]; and
- (ii) send to each member of each Ward Committee (if any) a copy of so much of the extract as relates to shops situated in his Ward.

Time for preparation and publication of such list.

32. The list mentioned in section 30 shall be prepared, and shall be published under section 31, at such time as may be prescribed by rule made in this behalf under section 85, clause (j).

Submission of objections and opinions to Collector.

33. (1) Objections to any proposal contained in any list prepared under section 30 may be received, at any time prior to the date prescribed by rule made in this behalf under section 85, clause (j), from—

- (a) persons paying municipal rates and residing in any Municipality to which such proposal relates, ²[or in Calcutta or, if any, such Municipality is divided into wards,] in the Ward to which such proposal relates or in any Ward adjoining such Ward; or
- (b) (in the case of shops not situated ¹[in Calcutta or] in any Municipality) persons owning or occupying land, or residing, in the vicinity of the shop to which such proposal relates; or
- (c) the District Magistrate.

³(2) Such objections must be submitted to the Collector, provided that in any Municipality or in Calcutta, they may at the option of the objector, be submitted to the Chairman of the Municipality or to the Chief Executive Officer of the Corporation, as the case may be.

(3) Every Chairman of a Municipality ⁴[or the Chief Executive Officer of the Corporation of Calcutta] to whom an extract has been sent under section 31, clause (c), shall send to the Collector, by a date prescribed by rule made in this behalf under section 85, clause (j),—

- (i) all objections (if any) to proposals contained in the extract which may be received by the Chairman,

¹These words were inserted, *ibid.*

²These words were substituted, *ibid.*

³Sub-section (2) was substituted for the original sub-section (2), *ibid.*

⁴These words were inserted by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

of 1909.]

(Chapter VI.—Licenses, Permits and Passes.—Secs. 34, 35.)

¹[or the Chief Executive Officer, as the case may be], from persons paying municipal rates, before that date, and

(ii) any opinion which ¹[in the case of the Corporation of Calcutta, the Chief Executive Officer or the Corporation, or in the case of a Municipality] the Chairman or the Municipal Commissioners may wish to record on the said proposals.

34. (1) After the date prescribed for the receipt of objections and opinions submitted under section 33, the Collector shall consider the same, and shall, if necessary, revise the said list, and shall decide for what places licenses for the retail sale of spirit shall be granted, and may, in his discretion, grant licenses accordingly.

Grant of licenses by Collector, and submission of list, objections and opinions to Excise Commissioner.

(2) The Collector shall then forthwith submit the said list, as so revised, and the said objections and opinions, and his own opinion,—

(a) in the case of shops outside the Calcutta district to the Commissioner of the Division, for transmission to the Excise Commissioner, and

(b) in the case of shops in the Calcutta district, to the Excise Commissioner.

(3) The Commissioner of the Division shall consider the list, objections and opinions so sent to him, and shall forward them, with his own opinion and recommendations (if any), to the Excise Commissioner.

35. The Excise Commissioner shall consider the list, objections and opinions so sent to him, and may modify or annul any order passed or license granted by the Collector; and, notwithstanding anything contained in section 8, his order shall be final :

Finality of decision of Excise Commissioner or Provincial Government.

Provided that, if there be any difference of opinion between—

(a) the Excise Commissioner, and

(b) the Commissioner of a Division, the ²[Chief Executive Officer] of the Corporation of Calcutta or the Corporation of Calcutta (if the opinion of the ³[the said Corporation] referred to in ⁴[clause (ii) of sub-section (3)] of section 33, has been recorded at a meeting of the Corporation),

the matter shall be referred by the Excise Commissioner to the ⁵[Provincial Government] whose decision shall be final.

¹These words were inserted, *ibid.*

²These words were substituted for the word "Chairman", *ibid.*

³These words were substituted for the words "Municipal Commissioners of Calcutta", *ibid.*

⁴These words and figures were substituted for the words and letters "sub-clause (ii)" *ibid.*

⁵See foot-note 4 on p. 235, *ante.*

[Ben. Act V

(Chapter VI.—Licenses, Permits and Passes.—Secs. 35A-40.)

Definition.

135A In sections 31, 33 and 35 the expression "Calcutta" has the meaning attached to it in clause (II) of section 3 of the Calcutta Municipal Act, 1923.

Application of sections 30 to 35 to licenses for retail sale of intoxicants other than spirit.

Exemption of certain licenses from sections 30 to 36.

36. The provisions of sections 30 to 35 as to licenses for the retail sale of spirit shall apply also in respect of licenses for the retail sale, in any local area specified in any order made by the ²[Provincial Government] in this behalf, of any other ³[intoxicant] specified in such order.

37. Sections 30 to 36 shall not apply in the case of any license which it is proposed to grant—

- (a) to any person, for the retail sale of any ³[intoxicant], during any period not exceeding six months; or
- (b) to any person, for the retail sale of any denatured spirit; or
- (c) to any person, for the retail sale of any ³[intoxicant] in substitution for a license which has been cancelled or surrendered before the expiration of the period for which it was granted; or
- (d) to any medical practitioner, chemist, druggist, apothecary or keeper of a dispensary, for the retail sale of any ³[intoxicant] for medicinal purposes.

Fees for terms, conditions and form of, and duration of, licenses, permits and passes.

38. (1) Every license, permit or pass granted under this Act—

- (a) shall be granted—
 - (i) on payment of such fees (if any), and
 - (ii) subject to such restrictions and on such conditions, and
- (b) shall be in such form and contain such particulars as the ²[Provincial Government] may direct.

(2) Every license, permit or pass under this Act shall be granted for such period (if any) as may be prescribed by rule made by the ²[Provincial Government] under section 85, clause (e).

39. [Continuance of licenses granted under former law.] Rep. by s. 14 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

Counterpart agreement by licensee, and security or deposit.

40. Any authority granting a license under this Act may require the grantee to execute a counterpart agreement in conformity with the tenor of his license, and to give such security for the performance of such agreement, or to make such deposit in lieu of security, as such authority may think fit.

¹Section 35A was inserted by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²See foot-note 4 on p. 235, ante.

³See foot-note 4 on p. 238, ante.

of 1909.]

(Chapter VI.—Licenses, Permits and Passes.—Secs. 41, 42.)

41. (1) No license granted under this Act shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the license or in any proceedings taken prior to the grant thereof. Technical defects, irregularities and omissions.

(2) The decision of the Excise Commissioner or (where reference is made to the ¹[Provincial Government] under section 35) the ¹[Provincial Government] as to what is a technical defect, irregularity or omission, shall be final.

42. (1) Subject to such restrictions as the ¹[Provincial Government] may prescribe, the authority who granted any license, permit or pass under this Act may cancel or suspend it— Power to cancel or suspend license, permit or pass.

- (a) if it is transferred or sublet by the holder thereof without the permission of the said authority ; or
- (b) if any duty or fee payable by the holder thereof be not duly paid : or
- (c) in the event of any breach by the holder thereof, or by any of his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions, thereof, or
- (d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence punishable ²[under the Dangerous Drugs Act, 1930, or] under the Merchandise Marks Act, 1889, or under any section which has been introduced into the Indian Penal Code by section 3 of that Act ; or
- (e) if the holder thereof is punished for any offence referred to in clause 8 of section 167 of the Sea Customs Act, 1878 : or
- (f) where a license, permit or pass has been granted on the application of the holder of an exclusive privilege granted under section 22, on the requisition in writing of such holder ; or
- (g) if the conditions of the license, permit or pass provide for such cancellation or suspension at will.

(2) When a license, permit or pass held by any person is cancelled under clause (a), clause (b), clause (c), clause (d) or clause (e) of sub-section (1) the authority aforesaid may cancel

¹See foot-note 4 on p. 235, *ante*.

²These words were inserted by s. 40 of and Sch. II to the Dangerous Drugs Act, 1930 (II of 1930).

II of 1930.
IV of
1889.

Act XLV
1860.

VIII of
1878.

(Chapter VI.—Licenses, Permits and Passes.—

Secs. 43, 44.)

any other license, permit or pass granted to such person¹[by, or by the authority of, the Provincial Government] under this Act, or under any other law for the time being in force relating to excise, or under the Opium Act, 1878.

I of 1878.

(3) The holder of a license, permit or pass shall not be entitled to any compensation for its cancellation or suspension under this section, or to the refund of any fee paid or deposit made in respect thereof.

Power to
withdraw
licenses.

43. (1) Whenever the authority who granted any license under this Act considers that the license should be withdrawn for any cause other than those specified in section 42, it shall remit a sum equal to the amount of the fees payable in respect thereof for fifteen days, and may withdraw the license either—

- (a) on the expiration of fifteen days' notice in writing of its intention to do so, or
- (b) forthwith, without notice.

(2) If any license be withdrawn under clause (b) of sub-section (1), the said authority shall, in addition to remitting such sum as aforesaid, pay to the licensee such further sum (if any), by way of compensation, as the Excise Commissioner may direct.

(3) When a license is withdrawn under sub-section (1), any fee paid in advance, or deposit made by the licensee in respect thereof shall be refunded to him after deducting the amount (if any) due to the Government.

Surrender of
license.

44. ²[(1) Any holder of a license granted under this Act to sell an ³intoxicant may, unless his license is liable to cancellation or suspension under section 42, surrender the same on—

- (i) the expiration of one month's notice in writing given by him to the Collector of his intention to surrender it, and
- (ii) payment of the fees payable for the license for the whole period for which it would have been current but for such surrender :

¹These words were inserted by Sch. IV of the Government of India (Adaption of Indian Laws) Order, 1937.

²Sub-section (1) was substituted for the original sub-section (1) by s. 15 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

³The word "intoxicant" was substituted for the words "excisable article" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1909.]

(Chapter VI.—Licenses, Permits and Passes.—Chapter VII.
—Departmental Management or Transfer.—Secs. 44A, 45.)

Provided that, if the Excise Commissioner is satisfied that there is sufficient reason for surrendering a license, he may remit to the holder thereof the sum so payable on surrender, and any fees paid in advance, or any portion of such sum or fees.]

(2) Sub-section (1) shall not apply in the case of a license for the sale of any country liquor or intoxicating drug in the exercise of an exclusive privilege granted under section 22.

Explanation.—The words “holder of a license,” as used in this section, include a person whose tender or bid for a license has been accepted, although he may not actually have received the license.

144A. No person to whom a license has been granted under this Act shall have any claim to the renewal of such license, or, save as provided in section 43, any claim to compensation on the determination thereof.

Bar to right of renewal and to compensation.

CHAPTER VII.

DEPARTMENTAL MANAGEMENT OR TRANSFER.

45. If any holder of a license granted under this Act, or any person to whom an exclusive privilege has been granted under section 22, contravenes any provision of this Act or any rule made hereunder, or makes default in complying with any condition imposed upon him by such license or privilege, or

Power of Collector to take grants under management, or to transfer them.

if any holder of a license granted under this Act surrenders the same under section 44,

the Collector may (in the case of a license, after the cancellation or surrender thereof, and, in the case of an exclusive privilege, at any time)—

- (a) take the grant under management, at the risk and loss of the person to whom it was made, or
- (b) transfer the unexpired portion of the grant, at the risk and loss of the said person, to any other person :

2 * * * *

¹Section 44A was inserted by s. 16 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²The proviso to s. 45 was repealed by s. 17, *ibid*.

(Chapter VIII.—Offences and Penalties.—Secs. 46, 47.)

CHAPTER VIII.

OFFENCES AND PENALTIES.

Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.

46. If any person, in contravention of this Act, or of any rule, notification or order made, issued or given, or license, permit or pass granted, under this Act,—

- (a) imports, exports, transports, manufactures, possesses or sells any ¹[intoxicant], or
- (b) cultivates any hemp plant (*Cannabis Sativa*), or
- (c) collects or sells any portion of the hemp plant (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced, or
- (d) bottles any liquor for purposes of sale, or
- (e) works any distillery or brewery, or
- (f) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any ¹[intoxicant] other than *tari*, or
- (g) establishes any distillery, brewery or warehouse or
- (h) removes any ¹[intoxicant] from any distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act,

he shall be liable to imprisonment for a term which may extend to ²[six] months, or to fine which may extend to one thousand rupees, or to both :

3 * * * *

Presumption as to offence where possession is not satisfactorily accounted for.

47. In prosecutions under section 46 it may be presumed, unless and until the contrary is proved, that the accused person has committed an offence punishable under that section in respect of—

- (a) any ¹[intoxicant], or
- (b) any still, utensil, implement or apparatus whatsoever, for the manufacture of any ¹[intoxicant] other than *tari*, or

¹See foot-note 4 on p. 238, *ante*.

²This word was substituted for the word "three" by s. 18 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

³The proviso was omitted by s. 40 of and Sch. II to the Dangerous Drugs Act, 1930 (II of 1930)

of 1909.]

(Chapter VIII.—Offences and Penalties.—Secs. 48, 49.)

(c) any materials which have undergone any process towards the manufacture of an ¹[intoxicant], or from which an ¹[intoxicant] has been manufactured,

for the possession of which he fails to account satisfactorily.

²48. If any person alters or attempts to alter any denatured spirit, whether manufactured in British India or not, with the intention that such spirit may be used for human consumption, whether as a beverage, or internally as a medicine, or in any other way whatsoever, by any method whatsoever,

Penalty for altering or attempting to alter any denatured spirit.

or has in his possession any spirit in respect of which he knows or has reason to believe that any such alteration or attempt has been made,

he shall be liable to imprisonment for a term which may extend to six months, or to fine which may extend to one thousand rupees, or to both.

³48A. In prosecutions under section 48, when the accused person is proved to have been in possession of any spirit which is, or contains, or has been derived from denatured spirit, and in respect of which any such alteration or attempt as is referred to in section 48 has been made, it may from the mere fact of such possession, be presumed, unless and until the contrary is proved, that such person—

Presumption as to offence under section 48 in certain cases.

(i) has himself made such alteration or attempt, or

(ii) knows or has reason to believe that such alteration or attempt has been made.

³48B. If any prosecution under this Act, it may be presumed, unless and until the contrary is proved, that any spirit which contains any quantity of any denaturant is, or has been derived from, denatured spirit.

Presumption as to any spirit which contains any denaturant.

49. If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf,

Penalty for adulteration by licensed manufacturer or vendor or his servant.

mixes, or permits to be mixed, with any ¹[intoxicant] manufactured, sold or kept or exposed for sale by him, any noxious drug or any article prohibited by rule made under

¹See foot-note 4 on p. 238, *ante*.

²Section 48 was substituted for the original section by s. 20 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

³Sections 48A and 48B were inserted by s. 21, *ibid*.

(Ben. Act V

(Chapter VIII.—Offences and Penalties.—Secs. 50, 51.)

section 86, clause (9), sub-clause (i), and such mixing does not amount to an offence punishable under section 272 of the Indian Penal Code, ¹[or

Act XLV
of 1860.

has in his possession any ²intoxicant in respect of which such admixture has been made,]

he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to one thousand rupees, or to both.

Penalty for
fraud by
licensed
manufacturer
or vendor
or his servant.

50. If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf,—

(a) sells or keeps or exposes for sale, as foreign liquor, any liquor which he knows or has reason to believe to be country liquor, and such sale does not amount to an offence punishable under section 417 or section 418 of the Indian Penal Code, or

(b) marks any bottle, case, package or other receptacle containing country liquor, or the cork of any such bottle, or

deals with any bottle, case, package or other receptacle containing country liquor,

with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor,

and such marking or dealing does not amount to an offence punishable under section 482 of the said Indian Penal Code,

he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or to both.

Penalty for
certain un-
lawful acts
of licensed
vendors or
their servants.

51. (1) If any licensed vendor, or any person in his employ and acting on his behalf,—

(a) in contravention of section 25, employs or permits to be employed, in any part of his licensed premises referred to in that section, any child or woman ; or

(b) sells any ²[intoxicant] to a person who is drunk or intoxicated ; or

(c) sells or delivers any spirit or intoxicating drug to any child apparently under the age of ²[sixteen years,] whether for consumption by such child or by any other person, and whether for consumption on or off the premises of such vendor ; or

¹These words were inserted by s. 22 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²See foot-note 3 on p. 258, *ante*.

³These words were substituted for the words "fourteen years" by s. 2 of the Bengal Excise (Amendment) Act, 1922 (Ben. Act VII of 1922).

of 1900.]

(Chapter VIII.—Offences and Penalties.—Secs. 52-54.)

- (d) permits drunkenness, intoxication, disorderly conduct or gaming on the premises of such vendor ; or
- (e) permits any persons whom he knows, or has reason to believe, to have been convicted of any non-bailable offence, or who are reputed prostitutes, to meet, or any such person to remain on the premises of such vendor, whether for the purposes of crime or prostitution or not.

he shall be liable to fine which may extend to five hundred rupees.

(2) When any licensed vendor, or any person in his employ and acting on his behalf, is charged with permitting drunkenness or intoxication on the premises of such vendor, and it is proved that any person was drunk or intoxicated on such premises, it shall lie on the person charged to prove that the vendor and the persons employed by him took all reasonable steps for preventing drunkenness or intoxication on such premises.

52. If any person, without lawful authority, has in his possession any quantity of any ¹[intoxicant], knowing the same to have been unlawfully imported, transported or manufactured, or knowing that the prescribed duty has not been paid thereon, he shall be liable to imprisonment for a term which may extend to ²[six] months, or to fine which may extend to one thousand rupees, or to both.

Penalty for possession of intoxicant in respect of which an offence has been committed.

53. (1) If any chemist, druggist, apothecary or keeper of a dispensary allows any ¹[intoxicant] which has not been *bona fide* medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to one thousand rupees, or to both.

Penalty for consumption in chemist's shop, etc.

(2) If any person not employed as aforesaid consumes any such ¹[intoxicant] on such premises, he shall be liable to fine which may extend to two hundred rupees.

54. If any holder of a license, permit or pass granted under this Act, or any person in his employ and acting on his behalf,—

Penalty for certain acts by licensee or his servants.

- (a) fails to produce such license, permit or pass on the demand of any officer empowered by the ³[Provincial Government], by notification, to make such demand, or

¹See foot-note 4 on p. 238, *ante*.

²This word was substituted for the word "three" by s. 18 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act. VII of 1914).

³See foot-note 4, on p. 235, *ante*.

(Chapter VIII.—Offences and penalties.—Secs. 55-58.)

(b) in any case not provided for in section 46, wilfully contravenes any rule made under section 85 or section 86, or

(c) wilfully does any act, in breach of any of the conditions of the license, permit or pass, for which a penalty is not proscribed elsewhere in this Act,

he shall be liable, in case (a), to fine which may extend two hundred rupees, and in case (b) or case (c) to fine which may extend to five hundred rupees.

Import, export,
transport,
manufacture,
sale or
possession by
one person on
account of
another.

55. (1) When any ¹[intoxicant] has been ²[imported, exported, transported,] manufactured or sold or is possessed by any person on account of any other person, and such other person knows or has reason to believe that such ²[import, export, transport,] manufacture or sale was, or that such possession is, on his account, the article shall, for the purposes of this Act, be deemed to have been ²[imported, exported, transported,] manufactured or sold by, or to be in the possession of, such other person.

(2) Nothing in sub-section (1) shall absolve any person who ²[imports, exports, transports,] manufactures, sells or has possession of an ¹[intoxicant] on account of another person from liability to any punishment under this Act for the unlawful ²[import, export, transport,] manufacture, sale or possession of such article.

Criminal
liability of
licensee for
acts of servant.

56. When any offence punishable under section 46, section 49, section 50, section 51, section 52 or section 54 is committed by any person in the employ and acting on behalf of the holder of a license, permit or pass granted under this Act, such holder shall also be punishable as if he had himself committed the offence, unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

Imprisonment
under section 55
or section 56.

57. No person other than the actual offender shall be punished under section 55 or section 56 with imprisonment, except in default of payment of a fine.

Penalty on
Excise Officer
making
vexatious
search, seizure,
detention or
arrest, or refusing
duty, or being
guilty of
cowardice.

58. If any Excise officer,—

(a) without reasonable grounds of suspicion, searches or causes to be searched, any place, under colour of exercising any power conferred by this Act, or

¹See foot-note 4 on p. 238, *ante*.

²These words were inserted by s. 23 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

of 1909.]

(Chapter VIII.—Offences and Penalties.—Secs. 59-62.)

- (b) vexatiously and unnecessarily seizes any property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or
- (c) vexatiously and unnecessarily detains, searches or arrests any person, or
- (d) without lawful excuse, ceases or refuses to perform, or withdraws himself from, the duties of his office unless expressly allowed to do so in writing by the Collector or unless he has given to his immediate superior two months' notice in writing of his intention to do so, or
- (e) is guilty of cowardice,

he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or to both.

59. If any person is convicted of any act in contravention of any of the provisions of this Act, or of any rule, notification or order made, issued or given under this Act, for which a penalty is not prescribed elsewhere in this Act, he shall be liable to fine which may extend to two hundred rupees.

Penalty for offences not otherwise punishable.

60. Every proceeding under this Act before a Collector, or before any officer, of such rank as the ¹[Provincial Government] may by notification, prescribe, who is exercising powers of a Collector, shall be deemed to be a "judicial proceeding" within the meaning of section 228 of the Indian Penal Code.

Penalty for contempt of Court.

Act XLV of 1860.

61. Whoever attempts to commit any offence punishable under this Act shall be liable to the punishment provided for such offence.

Penalty for attempt to commit offence.

62. If any person, after having previously been convicted of an offence punishable under section 46, ²[section 48,] section 52 or section 53, or under similar provisions in any enactment repealed by this Act ³[or in the Eastern Bengal and Assam Excise Act, 1910,]

Enhanced punishment after previous conviction.

E. B. and A. Act I of 1910.

subsequently commits and is convicted of an offence punishable under any of those sections,

¹See foot-note 4 on p. 235, *ante*.

²This word and figure were inserted by s. 24 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

³These words and figure were inserted by s. 24, *ibid*.

(Chapter VIII.—Offences and Penalties.—Sections 63, 64).

he shall be liable to twice the punishment which might be imposed on a first conviction under this Act :

¹Provided that nothing in this section shall prevent any offence, which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried. Act V of 1898.

What things
are liable to
confiscation.

63. (1) Whenever an offence has been committed which is punishable under this Act, the ²[intoxicant], materials, still, utensil, implement and apparatus in respect of or by means of which such offence has been committed shall be liable to confiscation.

(2) Any ²[intoxicant] lawfully imported, transported, manufactured, had in possession or sold along with, or in addition to, any ²[intoxicant] which is liable to confiscation under sub-section (1),

and the receptacles, packages and coverings in which any such ²[intoxicant] as first aforesaid, or any such materials, still, utensil, implement or apparatus as aforesaid, is found,

and the other contents, if any, of such receptacles or packages,

and the animals, carts, vessels, rafts or other conveyances used in carrying the same,

shall likewise be liable to confiscation :

Provided that no animal, cart, vessel, raft or other conveyance as aforesaid shall be liable to confiscation unless the owner thereof is proved to have been implicated in the commission of the offence.

Confiscation
by Magistrate
or Collector.

64. (1) When, in any case tried by him, the Magistrate decides that anything is liable to confiscation under section 63, he may either order confiscation or give the owner of such thing an option to pay, in lieu of confiscation, such fine as the Magistrate thinks fit.

(2) Whenever anything is liable to confiscation under section 63, and the offender or the person entitled to possession is not known or cannot be found, the case shall be inquired into and determined by the Collector, who may order confiscation :

¹This proviso was added by s. 24 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²See foot-note 4 on p. 238, *ante*.

of 1909.]

(Chapter VIII.—Offences and Penalties.—Sec. 65.)

Provided that no such order shall be made until the expiration of ¹[two months] from the date of seizing the thing intended to be confiscated, or without hearing any person who may claim any right thereto and the evidence (if any) which he produces in support of his claim :

Provided, further, that if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that its sale would be for the benefit of its owner, the Collector may at any time direct it to be sold : and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

65. (1) The Collector, or any Excise Officer specially empowered by the ²[Provincial Government] in this behalf, not below the rank of Deputy Collector, ³[or Superintendent of Excise],—

Power to compound offences and to release property liable to confiscation.

(a) may accept from any person whose license, permit or pass is liable to be cancelled or suspended under clause (a), clause (b) or clause (c) of section 42, or who is reasonably suspected of having committed an offence punishable under ⁴[any section of this Act other than section 58], payment of a sum of money, not exceeding two hundred rupees, in lieu of such cancellation or suspension or by way of composition for such offence, as the case may be : and

(b) in any case in which any property has been seized as being liable to confiscation under section 63, may, at any time before the Magistrate has passed an order under section 64, sub-section (1), release the property on payment of any sum not exceeding the value thereof as estimated by the Collector or such Excise Officer.

(2) When the payments referred to in sub-section (1) have been duly made, the accused person, if in custody, shall be discharged, and the property seized (if any) shall be released ; and no further proceedings shall be taken against such person or property.

¹These words were substituted for the words " one month " by s. 25 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²See foot-note 4 on p. 235, *ante*.

³These words were inserted by s. 26, of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁴These words and figure were substituted for the words and figures " section 49, section 51, section 54 or section 59 " by s. 26, *ibid*.

[Ben. Act V

(Chapter IX.—Detection, Investigation and trial of Offences and procedure.—Secs. 66, 67.)

CHAPTER IX.

DETECTION, INVESTIGATION AND TRIAL OF OFFENCES AND PROCEDURE.

Power to enter and inspect, and power to test and seize measures, etc.

66. Any of the following officers, namely,—

- (a) the Excise Commissioner, or
- (b) a Collector, or
- (c) any Excise Officer not below such rank as the ¹[Provincial Government] may, by notification, prescribe,

may, subject to any restrictions prescribed by the ¹[Provincial Government] by rule made under section 85,—

- (i) enter and inspect, at any time by day or night, any place in which any licensed manufacturer carries on the manufacture of, or stores, any ²[intoxicants]; and
- (ii) enter and inspect, at any time during which the same may be open, any place in which any ³[intoxicant] is kept for sale by any licensed person; and
- ⁴[(iii) examine the accounts and registers maintained in any such place as aforesaid; and]
- (iii) examine, test, measure or weigh any materials, stills, utensils, implements, apparatus or ³[intoxicant] found in any such place as aforesaid; and
- (iv) examine or test and seize any measures, weights or testing instruments, found in any such place as aforesaid, which he has reason to believe to be false.

Power to arrest without warrant, to seize articles liable to confiscation, and to make searches.

67. Any of the following persons, namely,—

- (a) any officer of the ⁵[Excise and Salt, Police, Customs] or Land-revenue Department, or
- (b) any person empowered by the ¹[Provincial Government] in this behalf, by notification,

may, subject to any restrictions prescribed by the ¹[Provincial Government] by rule made under section 85,—

- (i) arrest without warrant any person found committing an offence punishable under section 46, section 48, section 52 or section 53; and

¹See foot-note 4 on p. 235, *ante*.

²See foot-note 1 on p. 243, *ante*.

³See foot-note 4 on p. 238, *ante*.

⁴Clause (ii a) was inserted by s. 27 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁵These words were substituted for the words "Excise, Police, Salt, Customs, Opium" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

of 1909.]

(Chapter IX.—Detection, Investigation and trial of Offences and Procedure.—Secs. 68-69A.)

- (ii) seize and detain any article which he has reason to believe to be liable to confiscation under this Act or any other law for the time being in force relating to the excise-revenue ; and
- (iii) detain and search any person upon whom, and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which, he may have reasonable cause to suspect any such article to be.

68. The Collector, ¹[or any Magistrate empowered to try offences punishable under this Act,] may issue a warrant for the arrest of any person whom he has reason to believe to have committed ¹[or abetted the commission of] any offence punishable under section 46, section 48, section 52 or section 53.

Power to issue warrant of arrest.

69. If any Collector, or ²[any Magistrate empowered to try offences punishable under this Act,] upon information received, and after such inquiry (if any) as he thinks necessary, has reason to believe that any offence punishable under section 46, section 48, section 52 or section 53 has been, or is likely to be, committed ³[or abetted,]

Power to issue search-warrant.

he may issue a warrant to search for—

any ⁴[intoxicant], material, still, utensil, implement or apparatus in respect of which the alleged offence has been, or is likely to be, committed ⁵[or abetted] ⁵[or

any document, which throws or is likely to throw any light on the alleged offence.]

69A. The Collector, or any Magistrate empowered to try offences punishable under this Act, may at any time—

Power of Collector or Magistrate to arrest or search without issuing a warrant.

- (a) arrest, or direct the arrest in his presence of, any person for whose arrest he is competent at the time and in the circumstances to issue a warrant under section 68, or

¹These words were inserted by s. 28 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²These words were substituted for the word " Magistrate " by s. 29, *ibid.*

³These words were inserted by s. 29, *ibid.*

⁴See foot-note 4 on p. 238, *ante.*

⁵These words were added by s. 29 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁶Section 69A was inserted by s. 30, *ibid.*

(Chapter IX.—Detection, Investigation and trial of Offences and Procedure.—Secs. 70-72.)

(b) search, or direct a search to be made in his presence of, any place for the search of which he is competent to issue a search-warrant under section 69.

Power of
Excise Officer to
search without
a warrant.

70. Whenever ^{1*} * * any Excise Officer not below such rank as the ²[Provincial Government] may, by notification, prescribe, has reason to believe that an offence punishable under section 46, section 48, section 52 or section 53 has been, is being, or is likely to be, committed ³[or abetted,] and that a search-warrant cannot be obtained without affording the offender an opportunity of escaping or of concealing evidence of the offence,

he may, after recording the grounds of his belief, at any time by day or night enter and search any place, and may seize any thing found therein which he has reason to believe to be liable to confiscation under this Act ; and

may detain and search, and if he thinks proper, arrest, any person found in such place whom he has reason to believe to have committed ³[or abetted] any such offence as aforesaid.

Information
and aid to
Excise Officers.

71. (1) Every Officer of the Police, ⁴[Excise and Salt, Customs] and Land-revenue Departments, and every officer employed by ⁵[a body of Port Commissioners,] shall be bound, subject to any rules made under section 85, clause (l), to give immediate information to an Excise Officer of all breaches of any of the provisions of this Act which may come to his knowledge.

(2) Every officer referred to in sub-section (1), and every village *chaukidar* and *dafadar*, shall be bound, subject to any rules made under section 85, clause (l), to give reasonable aid to any Excise Officer in carrying out the provisions of this Act, or of any rule, notification or order made, issued or given under this Act, upon request made by such Officer.

Duty of owners
and occupiers
of land and
other persons
to give notice
of unlicensed
manufacture.

72. Whenever any ⁶[intoxicant] is manufactured, or any hemp plant (*Cannabis sativa*) is cultivated, or any portion of the hemp plant (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced is collected on any land, in contravention of this Act,

¹The words " a Collector or " were repealed by s. 31 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

²See foot-note 4 on p. 235, *ante*.

³These words were inserted by s. 31 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁴These words were substituted for the words " Salt, Customs, Opium " by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁵These words were substituted for the words " the Commissioners for the Port of Calcutta " by s. 32 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁶See foot-note 4 on p. 238, *ante*.

of 1909.]

(Chapter IX.—Detection, Investigation and trial of Offences and Procedure.—Secs. 73, 74.)

all owners and occupiers of such land, and their agents, and all *panchayets*, village-headmen, *patwaris*, *sarbarakars*, *chaukidars* and *dafadars* of the village,

shall, in the absence of reasonable excuse, be bound to give notice of the fact to a Magistrate or an officer of the Excise, Police or Land-revenue Department, as soon as the fact comes to their knowledge.

73. (1) A Collector may, without the order of a Magistrate, investigate any offence punishable under this Act which Court having jurisdiction over the local area within the limits of the Collector's jurisdiction would have power to inquire into or try under the provisions of Chapter XV of the Code of Criminal Procedure, 1898, relating to the place of inquiry or trial.

Power to Collector and certain Excise Officers to investigate offences.

Act V of 1898.

(2) Any other Excise Officer specially empowered in this behalf by the ¹[Provincial Government] in respect of all or any specified class of offences punishable under this Act may, without the order of a Magistrate, investigate any such offence which a Court having jurisdiction over the local area to which such Officer is appointed would have power to inquire into or try under the aforesaid provisions.

74. (1) Any Collector, or any Excise Officer empowered under section 73, sub-section (2), may, after recording in writing his reason for suspecting the commission of an offence which he is empowered to investigate, exercise—

Powers and duties of Collector and certain Excise Officers investigating offences.

- (a) any of the powers conferred upon a Police Officer making an investigation, or upon an officer in charge of a police-station, by sections 160 to 171 of the Code of Criminal Procedure, 1898, and,
- (b) as regards offences punishable under section 46, section 48, section 52 or section 53 of this Act—any of the powers conferred upon Police Officers in respect of cognizable offences by clause *first* of sub-section (1) of section 54 and by section 56 of the said Code ;

and the said portions of the said Code shall apply accordingly, subject to any restrictions or modifications prescribed by the ¹[Provincial Government] by rule made under section 85, clause (o).

(2) Subject to any restrictions prescribed by the ¹[Provincial Government], a Collector, or an Excise Officer empowered under section 73, sub-section (2), may, without reference

¹See foot-note 4 on p. 235, *ante*.

*(Chapter IX.—Detection, Investigation and trial of Offences
and Procedure.—Sec. 75.)*

to a Magistrate, and for reasons to be recorded by him in writing, stop further proceedings against any person concerned, or supposed to be concerned, in any offence which he or any Excise Officer subordinate to him has investigated.

(3) For the purposes of section 156 of the Code of Criminal Procedure, 1898, the area to which an Excise Officer empowered under section 73, sub-section (2), is appointed shall be deemed to be a police-station, and such Officer shall be deemed to be the officer in charge of such station.

Act V
of 1898.

(4) As soon as an investigation by a Collector or by an Excise Officer empowered under section 73, sub-section (2), has been completed, if it appears that there is sufficient evidence to justify the forwarding of the accused to a Magistrate, the investigating officer, unless he proceeds under sub-section (2) of this section or under section 65 of this Act, shall submit a report (which shall, for the purposes of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a police-report) to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on police reports.

75. (1) Whenever a Collector issues a warrant under this Act for the arrest of any person,

**Security
and bail.**

he shall direct, by endorsement on the warrant, that, if such person executes a bond with sufficient sureties for his attendance, before the Collector or before an Excise Officer empowered under section 73, sub-section (2), to investigate the case, at a specified time and thereafter until otherwise directed by the Collector or an Excise Officer empowered as aforesaid, the officer to whom the warrant is directed shall take such security, and shall release such person from custody.

(2) The endorsement shall state—

- (a) the number of sureties,
- (b) the amount in which they, and the person for whose arrest the warrant is issued, are respectively to be bound, and
- (c) the time at which such person is to attend as aforesaid.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Collector or to an Excise Officer empowered as aforesaid.

of 1909.]

(Chapter IX.—Detection, Investigation and trial of Offences and Procedure.—Sec. 76.)

(4) Whenever any person is arrested under this Act, otherwise than under a warrant, and is prepared to give bail, he shall be released on bail, or, at the discretion of the officer releasing him, on his own bond.

(5) Any Excise Officer not below such rank as the ¹[Provincial Government] may, by notification, prescribe, may release persons on bail or on their own bond.

(6) Bonds taken under this section from persons arrested otherwise than under warrant shall bind such persons to appear before the Collector or an Excise Officer empowered under section 73, sub-section (2), to investigate the case.

(7) The provisions of sections 498 to 502, 513, 514 and 515 of the Code of Criminal Procedure, 1898, shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section.

76. (1) Articles seized under the warrant of the Collector, and, unless security for their appearance before the Collector be taken, persons arrested under such a warrant, shall be produced before the Collector.

Production of articles seized and persons arrested.

(2) Articles seized under section 66, section 67 or section 69, and persons arrested under this Act by persons or officers not having authority to release arrested persons on bail or on their own bond, shall be produced before or forwarded to—

(a) the Collector or an Excise Officer empowered under section 73, sub-section (2), to investigate the case, or

(b) the nearest Excise Officer who has authority to release arrested persons on bail or on their own bond, or

(c) the officer in charge of the nearest police-station, whoever is nearer.

(3) When a person arrested is produced before an Excise Officer who has authority to release arrested persons on bail or on their own bond, or before an officer in charge of a police-station, such officer shall forward such person to, or take security for his appearance before, the Collector or the Excise Officer empowered under section 73, sub-section (2), to investigate the case.

(4) When any article seized cannot conveniently be conveyed before an officer referred to in sub-section (1) or sub-section (2), as the case may be, the person making the seizure shall dispose of them in some place of safety and forthwith report the seizure to such an officer.

Act V
of 1898.

¹See foot-note 4 on p. 235, ante.

*(Chapter IX.—Detection, Investigation and trial of Offences
and Procedure.—Secs. 77-80.)*

Custody by
Police of
articles seized.

77. (1) All officers in charge of police-stations shall take charge of and keep in safe custody, pending the orders of a Magistrate, or of the Collector, or of an Excise Officer empowered under section 73, sub-section (2), to investigate the case, all articles seized under this Act which may be delivered to them ; and shall allow any Excise Officer who may accompany such articles to the police-station, or who may be deputed for the purpose by an official superior, to affix his seal to such articles and to take samples of and from them.

(2) All samples so taken shall be sealed with the seal of the officer in charge of the police-station.

Reports of
arrests,
seizures and
searches.

78. When any Excise Officer below the rank of Collector, or any officer in charge of a police-station, makes, or receives information of, any arrest, seizure or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure or search, or of the information received, to the Collector, and to the Excise Officer (if any) empowered under section 73, sub-section (2), within the local limits of whose jurisdiction the arrest, seizure or search was made.

Execution of
Collector's
warrant.

79. Any warrant issued by a Collector may be executed by any officer selected by the Collector for the purpose :

Provided that no warrant issued by the Collector for execution in that part of the Calcutta district in which the administration of the Police is vested in the Commissioner of Police shall be executed by any Police Officer who is subordinate to the said Commissioner, unless it be endorsed by a Police Officer duly empowered in that behalf under section 7, clause (d).

Maximum
period of
detention.

80. (1) No person arrested under this Act shall be detained in custody for a longer period than under all the circumstances of the case is reasonable ; and such period shall not exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the place where a Collector or an Excise Officer empowered under section 73, sub-section (2), to investigate the case may be, and thence to the Court of a Magistrate having jurisdiction to inquire into or try the case.

(2) A Magistrate to whom an accused person is forwarded under section 167 of the Code of Criminal Procedure, 1898, by a Collector or an Excise Officer empowered under section 73, sub-section (2), may exercise the powers conferred upon a Magistrate by the said section 167.

of 1908.]

(Chapter IX.—Detection, Investigation and trial of Offences and Procedure.—Secs. 81-84.)

Act V
of 1898.

81. (1) Save as is in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure, 1898, relating to arrests, detentions in custody, searches, summonses, warrants of arrest, search-warrants and the production of persons arrested, shall apply, so far as may be, to arrests, detentions and searches made, summonses and warrants issued, and the production of persons arrested under this Act.

Application of certain provisions of the Code of Criminal Procedure, 1898.

(2) For the purposes of the said provisions of the said Code, a Collector shall be deemed to be a Court.

(3) Officers to whom a Collector's warrant is directed or endorsed, and officers (other than Collectors) making arrests, searches or seizures under this Act, shall, for the purposes of the said provisions of the said Code, be deemed to be Police Officers.

82. No Magistrate other than—

- (a) a Presidency Magistrate, or
- (b) a Magistrate whose powers are not less than those of a Magistrate of the second class, or
- (c) a Magistrate of the third class, specially empowered by the District Magistrate in this behalf,

Magistrates having jurisdiction to try offences.

shall try any offence punishable under this Act.

83. No Magistrate shall take cognizance of an offence referred to—

- (a) in section 46, section 48, section 52 or section 53, except on his own knowledge or suspicion, or on the complaint or report of an Excise Officer or an officer empowered in this behalf by the ¹[Provincial Government]; or
- (b) in section 54, section 58, clause (d) or clause (e), or section 59, except on the complaint or report of the Collector or an Excise Officer authorised by the Collector in this behalf.

Initiation of certain prosecutions.

84. The provisions of section 191 of the Code of Criminal Procedure, 1898, shall not apply in any case in which a Magistrate (not being the Collector) takes cognizance of an offence under this Act on the report of any officer referred to in clause (a) or clause (b) of section 83.

Bar to transfer of trial on application of accused.

¹See foot-note 4 on p. 235, *ante*.

(Chapter X.—Miscellaneous.—Sec. 85.)

CHAPTER X.

MISCELLANEOUS.

Power of
Provincial
Government to
make rules.

85. (1) The ¹[Provincial Government] may make rules to carry out the objects of this Act or any other law for the time being in force relating to the excise-revenue.

(2) In particular, and without prejudice to the generality of the foregoing provision, the ¹[Provincial Government] may make rules—

- (a) for prescribing the powers and duties of officers of the Excise Department ;
- (b) for regulating the delegation of any powers by ²* the Commissioner of a Division, the Excise Commissioner or Collectors under section 7, clause (g) ;
- (c) for declaring in what cases or classes of cases and to what authorities appeals shall lie from orders whether original or appellate, passed under this Act or under any rule made hereunder, and for prescribing the time and a manner for presenting, and the procedure for dealing with, such appeals ;
- (d) for regulating the import, export or transport of any ³[intoxicant] ;
- (e) for regulating the periods for which licenses for the wholesale or retail vend of any ³[intoxicant] may be granted, and the number of such licenses which may be granted for any local area ;
- (f) for prohibiting the grant of licenses for the retail sale of any ³[intoxicant] at any place or within any local area described in the rules, or for defining the places in the vicinity of which shops for the retail sale of any ³[intoxicant] shall not ordinarily be licensed ;
- (g) for prohibiting the grant to specified classes of persons of licenses for the retail sale of any ³[intoxicant] ;
- (h) for declaring, either generally, or in respect of areas described in the rules the persons or classes of persons to whom any ³[intoxicant] may or may not be sold ;

¹See foot-note 4 on p. 235, *ante*.

²The words "the Board" were repealed by s. 5 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

³See foot-note 4 on p. 238, *ante*.

of 1909.]

(Chapter X. Miscellaneous.—Sec. 86.)

- (j) for regulating the procedure to be followed and prescribing the matters to be ascertained before any license for the wholesale or retail vend of any ¹[intoxicant] is granted for any locality ;
- (k) for restricting the exercise of any of the powers conferred by ²[section 65, clause (a), and] sections 66 and 67 ;
- (l) for declaring the Excise Officers to whom, and the manner in which, information or aid should be given under section 71 ;
- (m) for the grant of expenses to witnesses ;
- (n) for the grant of compensation for loss of time to persons released by any Excise Officer under this Act on the ground that they have been improperly arrested, and to persons charged before a Magistrate with offences punishable under this Act and subsequently acquitted ; and
- (o) for prescribing restrictions or modifications in the application to Excise Officers of the provisions of the Code of Criminal Procedure, 1898, relating to powers of Police Officers which are referred to in section 74, sub-section (1), of this Act.

Act V
of 1898.

(3) The powers conferred by this section for making rules are subject to the condition that the rules be made after previous publication :

Provided that any such rules may be made without previous publication if the ³[Provincial Government] considers that they should be brought into force at once.

86. The ³[Provincial Government] may make rules—

Further
Power of
Provincial
Government to
make rules.

- (1) for regulating the manufacture, supply or storage of any ¹[intoxicant], and in particular, and without prejudice to the generality of this provision, may make rules for regulating—
 - (a) the establishment, inspection, supervision, management and control of any place for the manufacture, supply or storage of any ¹[intoxicant], and the provision and maintenance of fittings, implements and apparatus therein ;
 - (b) the bottling of liquor for purposes of sale ;
 - (c) the cultivation of the hemp plant (*Cannabis sativa*) ;

¹See foot-note 4 on p. 238, ante.

²These words and figure were inserted by s. 33 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

³See foot-note 4 on p. 235, ante.

[Ben. Act V

(Chapter X.—Miscellaneous.—Sec. 86.)

- (d) the collection of portions of the hemp plant (*Cannabis sativa*) from which intoxicating drugs can be manufactured or produced, and the manufacture or production of intoxicating drugs therefrom ;
- (e) the tapping of *tari*-producing trees and the drawing of *tari* from trees ;
- (f) the marking of *tari*-producing trees in areas notified under section 14, sub-section (1), and the maintenance of such marks ;
- (2) for fixing the strength, price or quantity in excess of or below which any ¹[intoxicant] shall not be supplied or sold, and the quantity in excess of which denatured spirit shall not be possessed, and for prescribing a standard of quality for any ¹ [intoxicant] ;
- (3) for declaring how spirit manufactured in British India shall be denatured ;
- (4) for causing spirit so manufactured to be denatured through the agency or under the supervision of ²[servants of the Crown] ;
- (5) for ascertaining whether any spirit so manufactured has been denatured ;
- (6) for regulating the deposit of any ¹[intoxicant] in a warehouse established, authorised or continued under this Act, and the removal of any ¹[intoxicant] from any such warehouse or from any distillery or brewery ;
- (7) for prescribing the scale of fees or the manner of fixing the fees payable in respect of any exclusive privilege granted under section 22 or any license, permit or pass granted under this Act, or in respect of the storing of any ¹[intoxicant]. ;
- (8) for regulating the time, place and manner of payment of such fees ;
- (9) for prescribing the restrictions under which or the conditions on which any license, permit or pass, may be granted, and in particular, and without prejudice to the generality of this provision, may make rules for—
- (i) prohibiting the admixture with any ¹[intoxicant] of any article deemed to be noxious or objectionable,

¹See foot-note 4 on p. 238, *ante*.

²These words were substituted for the words "Government officers" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1909.]

(Chapter X.—Miscellaneous.—Sec. 87.)

- (ii) regulating or prohibiting the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength,
 - (iii) prescribing the nature and regulating the arrangement of the premises in which any ¹[intoxicant] may be sold, and prescribing the notices to be exposed at such premises,
 - (iv) prohibiting or regulating the employment by the licensee of any person or class of persons to assist him in his business,
 - (v) prohibiting the sale of any ¹[intoxicant] except for cash,
 - (vi) prescribing the days and hours during which any licensed premises may or may not be kept open, and providing for the closing of such premises on special occasions,
 - (vii) prescribing the accounts to be maintained and the returns to be submitted by licensees, and
 - (viii) regulating the transfer of licenses ;
- (10) for prescribing the particulars to be contained in licenses, permits or passes granted under this Act;
 - (11) for the payment of compensation to licensees whose premises are closed under section 26 or under any rule made under sub-clause (vi) of clause (9) of this section ;
 - (12) for prescribing the time, place and manner of levying duty on ²[intoxicants] ;
 - (13) for providing for the destruction or other disposal of any ¹[intoxicant] deemed to be unfit for use ; and
 - (14) for regulating the disposal of things confiscated under this Act.

Explanation.—Fees may be prescribed under clause (7) of this section at different rates for different classes of exclusive privileges, licenses, permits, passes or storage, and for different areas.

87. [*Powers of Board exercisable from time to time*]. *Rep. by s. 5 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).*

¹See foot-note 4 on p. 238, *ante*.

²See foot-note 1 on p. 243, *ante*.

[Ben. Act V

(Chapter X.—Miscellaneous Sec. 88-91.)

Publication
and effect of
rules and
notifications.

88. All rules made, and notifications issued, under this Act shall be published in the ¹[*Official Gazette*], and on such publication shall have effect as if enacted in this Act.

Recovery of
dues.

89. (1) The following moneys, namely,—

- (a) all excise-revenue,
- (b) any loss that may accrue when a grant has been taken under management by the Collector or transferred by him under section 45, and
- (c) all amounts due to the ²[Provincial Government] by any person on account of any contract relating to the excise-revenue,

may be recovered from the person primarily liable to pay the same, or from his surety (if any), by distress and sale of his movable property, or by the process prescribed for the recovery of arrears of revenue.

(2) When a grant has been taken under management by the Collector, or has been transferred by him, under section 45, the Collector may recover, in any manner authorised by sub-section (1), any money due to the grantee by any lessee or assignee.

(3) When any money is due, in respect of an exclusive privilege, to a grantee referred to in section 23, from any person holding under him,

such grantee may apply to the Collector, and the Collector may recover such money on his behalf in either of the ways provided by sub-section (1) :

Provided that nothing in this sub-section shall affect the right of any such grantee to recover any such money by civil suit.

Power of
Provincial
Government to
exempt
intoxicants from
provisions of
Act.

90. The ³[Provincial Government] may, by notification, either wholly or partially, and subject to such condition (if any) as it may think fit to prescribe, exempt any ⁴[intoxicant] from all or any of the provisions of this Act, either throughout Bengal or in any specified local area, or for any specified period or occasion or as regards any specified class of persons.

Bar to certain
suits.

91. No suit shall lie in any Civil Court against the ⁵[Crown] or any Excise Officer for damages for any act in good faith done or ordered to be done in pursuance of this Act or of any other law for the time being in force relating to the excise-revenue.

¹These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the word "Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 4 on p. 235, *ante*.

⁴See foot note 4 on page 238, *ante*.

⁵This word was substituted for the words "Secretary of State for India in Council" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1909.]

(Chapter X.—Miscellaneous.—Secs. 92-93.)

92. No Civil Court shall try any suit against the ¹[Crown] in respect of anything done, alleged to have been done, in pursuance of this Act, Limitation of suits and prosecutions.

and, except with the previous sanction of the ²[Provincial Government], no Magistrate shall take cognizance of any charge made against any Excise Officer under this Act or any other law relating to the excise-revenue, or made against any other person under this Act,

unless the suit or prosecution is instituted within six months after the date of the act complained of.

Ben. Act
III of
1884.

92A. Section 261 of the Bengal Municipal Act, 1884, shall not apply to—

Bar to application of section 261 of the Bengal Municipal Act, 1884.

(a) any distillery, brewery, warehouse or other place of storage licensed, established, authorised, or continued under this Act, or

(b) the premises used for the manufacture or sale of any ³[intoxicant] by the holder of a license granted under this Act for such manufacture or sale.

93. [Repeal.] *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)*

¹See foot-note 5 on p. 280, *ante*.

²See foot-note 4 on p. 235, *ante*.

³Section 92A was inserted by s. 34 of the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914).

⁴See foot-note 4 on p. 238, *ante*.

[Ben. Act V of 1909.]

(The Schedule.)

THE SCHEDULE.

Rep. by the Bengal Repealing and Amending Act, 1938
(Ben. Act I of 1939.)

Bengal Act II of 1911

[The Bengal Vaccination (Amendment) Act, 1911]¹.

(22nd March 1911.)

Ben. Act V of 1880. *An Act further to amend the Bengal Vaccination Act, 1880.*

WHEREAS it is expedient further to amend the Bengal Vaccination Act, 1880, in manner hereinafter appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Vaccination (Amendment) Act, 1911; and Short title and local extent.

(2) It applies in the first instance only to—

(a) Calcutta, as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899.²

(b) the Port of Calcutta, and

(c) the Cossipore-Chitpur, Garden Reach, Howrah, Maniktola, South Suburban and Tollyganj Municipalities.

Ben. Act III of 1899.

2. (1) The ³[Provincial Government] may, by notification published in the ⁴[*Official Gazette*] declare its intention to extend this Act or any portion thereof to any town or selected area not mentioned in section 1, sub-section (2). Power to extend Act.

(2) Any inhabitant of any such town or area who objects to such extension may, within a period of six weeks from such publication, send his objection in writing to a Secretary to the Government of Bengal; and the ³[Provincial Government] shall consider all objections so sent.

¹LEGISLATIVE PAPERS. For Statement of Objects and Reasons, see *Calcutta Gazette*, 1910, Pt. IV, pp. 136, 137; for Proceedings in Council, see *ibid*, Pt. IV A, p. 518; and *ibid*, 1911, Pt. IVA, p. 26.

LOCAL EXTENT.—This Act extends to the areas mentioned in s. 1 (2), and may be extended by notification to any other town or selected area in Western Bengal, see s. 2 (1).

The whole of this Act has since been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), s. 3, Sch. I.

²Bengal Act III of 1899 has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923) and this reference should now be construed as a reference to the latter Act—see s. 10 of the Bengal General Clauses Act, 1899 (Ben. Act I of 1899).

³These words were substituted for the words “Local Government” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words “*Calcutta Gazette*”, *ibid*.

[Ben. Act II of 1911.]

(Secs. 3-20.)

(3) After the expiration of the said period, the ¹[Provincial Government], if no objections have been so sent, or if it considers that the objections so sent are insufficient, may, by a like notification, effect the proposed extension.

(4) The substance of every notification under sub-section (1) or sub-section (3) shall be proclaimed and notified in the vernacular, within the town or area affected, by such means and in such manner as the ¹[Provincial Government] may direct.

Power to suspend
Act.

3. The ¹[Provincial Government] may, by notification in the ²[*Official Gazette*] suspend the operation of this Act in any place.

4 to 20. [*Amendments incorporated in Bengal Act V of 1880*].

¹See foot-note 3 on p. 283, *ante*.

²See foot-note 4 on p. 283, *ante*

Bengal Act V of 1911

(The Calcutta Improvement Act, 1911.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title, commencement and extent.
2. Definitions.

CHAPTER II.

THE BOARD OF TRUSTEES.

Constitution of the Board.

3. Creation and incorporation of Board.
4. Constitution of the Board.
5. Appointment of Trustees.
6. *Ex-officio* Trustee.
7. Election of other Trustees.
8. Appointment in default of election.
9. Disqualifications for being appointed or elected a Trustee.
10. The Chairman to be a whole-time officer.
11. Remuneration of Chairman.
12. Leave of absence or deputation of the Chairman.
13. Appointment, etc., of acting Chairman.
14. Leave of absence to other Trustees.
15. Removal of Trustees.
16. Filling of casual vacancies in certain cases.
17. Term of office of Trustees.

Conduct of Business.

18. Meetings of Board.
19. Temporary association of members with the Board for particular purposes.
20. Constitution and functions of Committees.
21. Meetings of Committees.
22. Fees for attendance at meetings.
23. Trustees and associated members on Board or Committee not to take part in proceedings in which they are personally interested.
24. Power to make and perform contracts.
25. Execution of contracts and approval of estimates.
26. Further provisions as to execution of contracts, and provision as to seal of Board.
27. Tenders.
28. Security for performance of contract.
29. Supply of documents and information to the Government.

*Officers and Servants.***SECTION.**

30. Statement of strength and remuneration of staff.
31. Board to make rules.
32. Powers of appointment, etc., in whom vested.
33. Sanction of Provincial Government required to certain statements, rules and orders.
34. Control by Chairman.
35. Delegation of certain of Chairman's functions.

CHAPTER III.**IMPROVEMENT SCHEMES AND RE-HOUSING SCHEMES.**

36. When general improvement scheme may be framed.
37. Authority for making an official representation for a general improvement scheme.
38. Consideration of official representations.
39. When street scheme may be framed.
40. Matters to be considered when framing improvement schemes.
41. Matters which must be provided for in improvement schemes.
42. Matters which may be provided for in improvement schemes.
43. Preparation, publication and transmission of notice as to improvement scheme, and supply of documents to applicants.
44. Transmission to Board of representation by Corporation or Municipality as to improvement scheme.
45. Service of notice as to proposed acquisition of land or recovery of betterment fee.
46. Furnishing of copy of, or extracts from, the municipal assessment-book.
47. Abandonment of improvement scheme, or application to Provincial Government to sanction it.
48. Power to sanction or reject improvement scheme.
49. Notification of sanction to improvement scheme.
50. Alteration of improvement scheme after sanction.
51. Combination of improvement schemes.
52. Re-housing persons displaced by improvement schemes.
53. Width of streets.
54. Transfer to Board, for purposes of improvement scheme, of building or land vested in the Corporation or in the Commissioners of a Municipality.
55. Transfer of private street or square to Board for purposes of improvement scheme.
56. Provision of drain or water-work to replace another situated on land vested in the Board under section 54 or section 55.
57. Bar to application of certain sections of the Calcutta Municipal Act, 1899, to streets vested in the Board.
58. Repair and watering of streets vested in the Board.
59. Guarding and lighting when street vested in the Board is opened or broken up, or when street is under construction and speedy completion of work.
60. Prevention or restriction of traffic in street vested in the Board during progress of work.
61. Provision of facilities, and payment of compensation, when work is executed by Board in public street vested in them.
62. Power of Board to turn or close public street or square vested in them.

SECTION.

- 63. Projected public streets.
- 64. Reference of disputes to Tribunal.
- 65. Vesting in Corporation of streets laid out or altered and open spaces provided, by the Board under an improvement scheme.
- 66. Application of section 65 to other Municipalities.
- 67. Power of Board to retain service passages.

CHAPTER IV.

ACQUISITION AND DISPOSAL OF LAND.

Acquisition by Agreement.

- 68. Power to purchase or lease by agreement.

Compulsory Acquisition.

- 69. Power to acquire land under the Land Acquisition Act, 1894.
- 70. Tribunal to be constituted.
- 71. Modification of the Land Acquisition Act, 1894.
- 72. Constitution of Tribunal.
- 73. Remuneration of members of Tribunal.
- 74. Officers and servants of Tribunal.
- 75. Payments by Board on account of Tribunal.
- 76. Power to make rules for Tribunal.
- 77. Award of Tribunal how to be determined.

Abandonment of Acquisition.

- 78. Abandonment of acquisition in consideration of special payment.

Betterment fee.

- 78A. Payment of betterment fee.
- 78B. Assessment of betterment fee by Board.
- 78C. Settlement of betterment fee by arbitrators.
- 78D. Fees for arbitrators.
- 78E. Proceedings of arbitrators.
- 78F. Board to give notice to persons liable to payment of betterment fee.
- 78G. Agreement to make payment of betterment fee a charge on land.

Recovery of special payments and betterment fees.

- 79. Recovery of money payable in pursuance of sections 78, 78B, 78C or 78G.
- 79A. Board to appoint persons for enforcement of processes for recovery of dues.

Acquisition on fresh declaration.

- 80. Agreement or payment not to bar acquisition under a fresh declaration.

Disposal of land.

- 81. Power to dispose of land.

CHAPTER V.

TAXATION.

Duty on Transfers of Property.

SECTION.

82. Duty on certain transfers of immovable property.

Terminal Tax on Passengers.

83. Terminal tax on passengers by railway or inland steam-vessel.

Customs Duty on Jute.

84. Customs duty on exports of jute from Calcutta by sea.
85. Section 5 of the Indian Tariff Act, 1934, not to apply to jute.

Supplemental Provisions.

86. Power to Provincial Government to make rules.
87. Punishment for offences.

CHAPTER VI.

FINANCE.

Municipal Contributions.

88. Contributions from Municipal Funds.

Loans.

89. Power of Board to borrow money.
90. (*Repealed*).
91. Loans from Banks.
92. Diversion of borrowed money to purposes other than those first approved.
93. Form, signature, exchange, transfer and effect of debentures.
94. Signature of coupons attached to debentures.
95. Payments to survivors of joint payees.
96. Receipt by joint holder for interest or dividend.
97. Priority of payments for interest and repayment of loans.
98. Repayment of loans taken under section 89.
99. Establishment and maintenance of sinking funds.
100. Power to discontinue payments into sinking fund.
101. Investment of sinking funds.
102. Application of sinking funds.
103. Annual statements by trustees.
104. Annual examination of sinking funds.

Enforcement of Liabilities.

105. Procedure if Board fail to make any payment or investment in respect of loans.
106. Procedure if Chairman of Corporation fails to make any payment due to Board or Accountant-General.
107. Payments under section 105 to be a charge on the property of the Board.

Budget Estimates.

SECTION.

108. Estimates of income and expenditure to be laid annually before the Board.
109. Sanction of Board to estimates.
110. Approval of Provincial Government to estimates.
111. Transmission of copy of estimate to Executive Officer of Corporation.
112. Special provisions as to the first estimate after the constitution of the Board.
113. Supplementary estimates.
114. Adherence to estimate, and maintenance of closing balance.

Banking and Investments.

115. Receipt of moneys, and deposit in Imperial Bank of India.
116. Investment of surplus money.
117. Payments by cheque.
118. Signature of orders under section 116, and cheques.
119. Duty of Chairman and others before signing cheque.

Accounts.

120. Definition of "cost of management."
121. Keeping of capital account and revenue account.
122. Credits to capital account.
123. Application of capital account.
124. Credits to revenue account.
125. Application of revenue account.
126. Power to direct sale of securities in which any surplus of the revenue account is invested.
127. Advances from revenue account to capital account.
128. Advances from capital account to revenue account.
129. Submission of abstracts of accounts to Provincial Government.
130. Annual audit of accounts.
131. Powers of auditor.
132. Remuneration of auditor.
133. Reports and information to be furnished by auditor to the Board.
134. Board to remedy defects pointed out by auditor.
135. Auditor's report to be sent to each Trustee and considered by Board.
136. Publication and transmission of an abstract of the accounts.

CHAPTER VII.

Rules.

137. Further powers to Provincial Government for making rules.
138. Further powers to Board for making rules.
139. Conditions precedent to the making of rules under section 86, 137 or 138.
140. Sanction of Provincial Government required to rules made under section 138.
141. Publication of rules.
142. Printing and sale of copies of rules.
143. Exhibition of copies of rules.
144. Power of Provincial Government to cancel rules made under section 138.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

Status of Trustees, etc.

SECTION.

145. Trustees, etc., deemed public servants.

Contributions towards leave-allowances and pensions of Government servants.

146. Contributions by Board towards leave-allowances and pensions of servants of the Crown employed under this Act.

Extension of Acts to areas in the neighbourhood of the Calcutta Municipality.

147. Power to extend the Calcutta Municipal Act, 1923, to areas, near Calcutta, to which provisions of the present Act have been extended.
148. Publication of notifications under sections 1 (3) and 147 (1) in draft, for criticism.

Facilities for movement of the population.

149. Powers of the Board for facilitating movement of the population.

Telegraph and Railways Acts.

150. Saving of Telegraph and Railways Acts.

Legal proceedings.

151. Cognizance of offences.
152. Limitation of time for prosecution.
153. Power to hear case in absence of accused when summoned to appear.
154. Powers of Chairman as to institution, etc., of legal proceedings and obtaining legal advice.
155. Indemnity to Board, etc.
156. Notice of suit against Board, etc.

Police.

157. Co-operation of the Police.
158. Arrest of offenders.

Evidence.

159. Proof of consent, etc., of Board or Chairman or officer or servant of Board.

Validation.

160. Validation of acts and proceedings.

Compensation.

161. General power of Board to pay compensation.
162. Compensation to be paid by offenders for damage caused by them.

Public notices and advertisements.

163. Public notices how to be made known.
164. Newspapers in which advertisements or notices to be published.

Signature and Service of notices or bills.

SECTION.

- 165. Stamping signature on notices or bills.
- 166. Service how to be effected.

Surveys.

- 167. Power to make surveys, or contribute towards their cost.

Power of Entry.

- 168. Power of entry.

Penalties.

- 169. Punishment for acquiring share or interest in contract, etc., with the Board.
- 170. Penalty for removing fence, etc., in street.
- 171. Penalty for building within street alignment or building line of a projected public street.
- 171A. Penalty for failure to remove wall or building in respect of which agreement has been executed.
- 172. (*Repealed.*)
- 173. Penalty for failure to comply with requisition made by auditor.
- 174. Penalty for obstructing contractor or removing mark.

Recovery of Expenses.

- 174A. Removal of wall or building and recovery of expenses.
- 175. (*Omitted.*)

Suspension or abolition, and re-imposition, of taxation or Municipal contributions.

- 176. Suspension or abolition, and re-imposition, of taxation or Municipal contributions.

Dissolution of Board.

- 177. Ultimate dissolution of Board, and transfer of their assets and liabilities to the Corporation.

The Schedule.

Bengal Act V of 1911

(The Calcutta Improvement Act, 1911.)¹

(20th September 1911.)

An Act to provide for the improvement and expansion of Calcutta.

WHEREAS it is expedient to make provision for the improvement and expansion of Calcutta by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing buildings, acquiring land for the said purposes and for the re-housing of persons of the poorer and working classes displaced by the execution of improvement schemes, and otherwise as hereinafter appearing;

AND WHEREAS it is expedient that a Board of Trustees should be constituted and invested with special powers for carrying out the objects of this Act;

55 and 56
Vict., c.
14. AND WHEREAS the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the provisions of this Act, which affect Acts passed by the Governor General of India in Council;

24 and 25
Vict., c.
67. AND WHEREAS the sanction of the Governor General has also been obtained, under section 43 of the Indian Councils Act, 1861, to the enactment of the provisions of Chapter V of this Act, relating to taxation;

¹LOCAL EXTENT—This Act (except sections 82 to 86) extends only to the Calcutta Municipality—See s. 1 (3).

Section 82 originally extended throughout Bengal as constituted in the year 1911, i.e., to—

- (1) the present Province of Bengal except Eastern Bengal, and
- (2) the Province of Bihar and Orissa.

This section has since been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), s. 3, Sch. I.

Section 83 extends to—

- (1) railway stations in the Calcutta and Howrah Municipalities, and
- (2) certain landing-places in the Port of Calcutta;

Section 84 extends to the Port of Calcutta;

Section 85 extends to Calcutta;

Section 86 has the same local extent as sections 82, 83 and 84. So far as it affects s. 82, it has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), s. 3, Sch. I.

Several sections of the Act (e.g., ss. 40 to 52, 54 to 56, 63, 66, 149, 163, 167, 168) contemplate that operations of the Board of Trustees constituted under it may be carried on in areas beyond the Calcutta Municipality, and section 1 (3) gives power to extend provisions of the Act to such areas.

(Chapter I.—Preliminary.—Secs. 1, 2.)

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title,
commence-
ment and
extent.

1. (1) This Act may be called the Calcutta Improvement Act, 1911.

(2) It shall come into force on such day¹ as the ²[Provincial Government] may, by notification, direct.

(3) Except as otherwise hereinafter provided, this Act shall extend only to the Calcutta Municipality; but any provision which extends only to the Calcutta Municipality may be extended by the ²[Provincial Government], entirely or in part, by notification, under the procedure prescribed by section 148, to any specified area in the neighbourhood of that Municipality.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

³(1a) “betterment fee” means the fee prescribed by section 78A in respect of an increase in value of land resulting from the execution of an improvement scheme;

(a) “the Board” means the Board of Trustees for the improvement of Calcutta, constituted under this Act;

⁴[(aa) “building line” means a line (in rear of the street alignment) up to which the main wall of a building abutting on a projected public street may lawfully, extend;]

(b) “the Calcutta Municipality” means “Calcutta” as defined in ⁵[Clause (II) of section 3 of the Calcutta Municipal Act, 1923];

(c) “Chairman” means the Chairman of the Board;

(d) “the Corporation” means the Corporation of Calcutta constituted under the said Calcutta Municipal Act, ⁶[1923];

Ben. Act
III of
1923.

¹i.e., the 2nd January, 1912, See notification No. 1148, dated the 30th October, 1911.

²These words were substituted for the words “Local Government” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Clause (1a) was inserted by s. 2 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

⁴Clause (aa) was inserted by s. 2 (a) of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

⁵These words and figures were substituted for the words and figures “clause (7) of section 3 of the Calcutta Municipal Act, 1899” by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁶This figure was substituted for the figure “1899”, *ibid.*

of 1911.]

(Chapter II.—The Board of Trustees.—Sec. 3.)

1 * * * *

(f) "improvement scheme" means a general improvement scheme or a street scheme, or both, ²[but does not include a projected public street referred to in section 63];

(g) "land" has the same meaning as in clause (a) of section 3 of the Land Acquisition Act, 1894;

(h) "municipal assessment-book" means the assessment-book kept under ³[section 143 of the Calcutta Municipal Act, 1923] or the valuation and rating list prepared under ⁴[section 136 of the Bengal Municipal Act, 1932];

(j) "notification" means a notification published in the ⁵[*Official Gazette*];

(k) "Secretary to the Board" means the person for the time being appointed by the Board to discharge the functions of Secretary to the Board;

(l) the "Tribunal" means the Tribunal constituted under section 72;

(m) "Trustee" means a Member of the Board; and

(n) the expressions ^{6*} * "drain," "public street" and "street alignment" have the same meaning as in clauses ^{6*} ⁷[(25), (57) and (68), respectively, of section 3 of the Calcutta Municipal Act, 1923].

CHAPTER II.

THE BOARD OF TRUSTEES.

Constitution of the Board.

3. The duty of carrying out the provisions of this Act shall, subject to the conditions and limitations hereinafter shall, subject to the conditions and limitations hereinafter Creation and incorporation of Board.

¹Clause (e) which was repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), is omitted.

²These words and figure were added by s. 2 (b) of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

³These words and figures were substituted for the words and figures "section 164 of the Calcutta Municipal Act, 1899" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁴These words and figures were substituted for the words and figures "section 103 of the Bengal Municipal Act, 1884," *ibid.*

⁵These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶The words "building line," and the figure and brackets "(3)," were repealed by s. 2 (c) of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

⁷These figures and words were substituted for the figures and words "(16), (37) and (47), respectively, of section 3 of the Calcutta Municipal Act, 1899" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

I of 1894.

Ben. Act
III of
1923.
Ben. Act
XV of
1932.

(Chapter 11.—The Board of Trustees.—Secs. 4-7.)

contained, be vested in a Board, to be called, “The Trustees for the Improvement of Calcutta”; and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

Constitution of the Board.

4. The Board shall consist of eleven Trustees, namely, —
- (a) a Chairman,
 - (b) the ¹[Executive Officer of the Corporation,]
 - (c) three other members of the Corporation,
 - (d) a member of the Bengal Chamber of Commerce,
 - (e) a member of the Bengal National Chamber of Commerce, and
 - (f) four other persons.

Appointment of Trustees.

5. The Chairman and the four persons referred to in clause (f) of section 4 shall be appointed by the ²[Provincial Government] by notification.

Ex-officio Trustee.

6. The ¹[Executive Officer of the Corporation,] shall be a Trustee *ex-officio*.

Election of other Trustees.

7. (1) The three members of the Corporation referred to in clause (c) of section 4 shall be elected as follows, namely,—

- (a) one by the Corporation,
- ³[(b) one by the Councillors elected by the constituencies other than the special constituencies, and
- (c) one jointly by the Councillors appointed under clause (b) of section 5 of the Calcutta Municipal Act, 1923, and the Councillors elected by the special constituencies].

Ben. Act
III of
1923.

- (2) The member of the Bengal Chamber of Commerce referred to in clause (d) of section 4 shall be elected by that Chamber.

¹These words were substituted for the words “Chairman of the Corporation,” by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²See foot-note 2 on p. 294, *ante*.

³Clauses (b) and (c) were substituted by s. 2 of the Calcutta Improvement (Amendment) Act, 1926 (Ben. Act II of 1926).

of 1911.]

(Chapter II.—The Board of Trustees.—Secs. 8, 9.)

(3) The member of the Bengal National Chamber of Commerce referred to in clause (e) of section 4 shall be elected by that Chamber.

(4) The Secretary to the Corporation, the Secretary to the Bengal Chamber of Commerce and the Secretary to the Bengal National Chamber of Commerce shall respectively make a return, in duplicate, to the Chairman setting forth the name in full of every person elected under this section; and the said return shall be published by notification under the signature of the Chairman.

8. If any of the bodies of electors referred to in section 7 does not, by such date as may be prescribed by rule made in that behalf under section 137, elect a person to be a Trustee, the ¹[Provincial Government] shall, by notification, appoint a person belonging to such body to be a Trustee; and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by such body.

Appointment
in default of
election.

9. (1) A person shall be disqualified for being appointed or elected a Trustee if he—

Disqualifications
for being appointed
or elected as
Trustee.

(a) has been sentenced by any Court for any non-bailable offence, such sentence not having been subsequently reversed or quashed, and such person's disqualification on account of such sentence not having been removed by an order which the ¹[Provincial Government] is hereby empowered to make, if it thinks fit, in this behalf; or

(b) is an undischarged insolvent; or

(c) holds any office or place of profit under the Board; or

(d) has, directly or indirectly, by himself, or by any partner, employer or employee, any share or interest in any contract or employment with by, or on behalf of, the Board; or

(e) is a director, or a secretary, manager or other salaried officer, of any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of, the Board.

¹See foot-note 2 on p. 294, *ante*.

(Chapter II.—The Board of Trustees.—Secs. 10, 11.)

(2) But a person shall not be disqualified as aforesaid, or be deemed to have any share or interest in such contract or employment as aforesaid, by reason only of his having a share or interest in—

- (i) any sale, purchase, lease, or exchange of land, or any agreement for the same ; or
- (ii) any agreement for the loan of money, or any security for the payment of money only ; or
- (iii) any newspaper in which any advertisement relating to the affairs of the Board is inserted ; or
- (iv) the occasional sale to the Board, to a value not exceeding two thousand rupees in any one financial year, of any article in which he trades ;

or by reason only of his having a share or interest, otherwise than as director, or secretary, manager or other salaried officer, in any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of, the Board.

**The Chairman
to be a whole-
time officer.**

10. While any person is holding the office of Chairman he shall not hold any other salaried office, and, subject to any exceptions permitted by the ¹[Provincial Government] shall devote his whole time and attention to his duties under this Act.

**Remuneration of
Chairman.**

11. (1) The Chairman shall receive such monthly salary not exceeding three thousand rupees, as may be fixed by the ¹[Provincial Government] :

Provided that, if the Chairman, after having held his office for three years, is re-appointed for a further term of not less than two years, the ¹[Provincial Government] may direct that his monthly salary be increased to any sum not exceeding three thousand five hundred rupees.

(2) The word “ salary,” as used in this section, excludes allowances to which the Chairman may be entitled and any contribution payable on his account under any general or special orders of the Government for regulating the transfer of Government servants to foreign service.

(3) The ¹[Provincial Government] may, if it thinks fit, direct the payment to the Chairman of a house-rent and conveyance allowance, not exceeding five hundred rupees *per mensem* in addition to his salary.

¹See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter II.—The Board of Trustees.—Secs. 12-15.)

12. (1) The ¹[Provincial Government] may, after consultation with the Board, grant leave of absence to the Chairman or depute him to other duties, for such period as it thinks fit. Leave of absence or deputation of the Chairman.

(2) The allowance (if any) to be paid to the Chairman while absent on leave or deputation shall be such amount, not exceeding his salary, as may be fixed by the ¹[Provincial Government]:

²Provided that, if the Chairman is a servant of the Crown, the amount of such allowance shall be such as he may be entitled to under the conditions of his service under the Crown relating to transfer to foreign service.

13. (1) Whenever the Chairman is granted leave of absence or deputed to other duties, the ¹[Provincial Government] may appoint a person to act as Chairman. Appointment, etc., of acting Chairman.

(2) The salary and house-rent and conveyance allowance (if any) of any person appointed to act as Chairman shall be fixed by the ¹[Provincial Government], subject to the provisions of section 11.

(3) Any person appointed to act as Chairman shall exercise the powers and perform the duties conferred and imposed by and under this Act on the Chairman and shall be subject to the same liabilities, restrictions and conditions as the Chairman.

14. The Board may permit any Trustee, other than the Chairman or the ³[Executive Officer of the Corporation] to absent himself from meetings of the Board for any period not exceeding six months. Leave of absence to other Trustees.

15. (1) The ¹[Provincial Government] may, by notification, declare that any Trustee shall cease to be a Trustee Removal of Trustees.

- (a) if he has acted in contravention of section 23, or
- (b) if he has been absent from, or is unable to attend, the meetings of the Board for any period exceeding six consecutive months, or
- (c) if he has, without the permission of the Board, been absent from the meetings of the Board for any period exceeding three consecutive months, or
- (d) if he is a salaried servant of the Government, and if his continuance in office as a Trustee is, in the opinion of the ¹[Provincial Government], undesirable.

¹See foot-note 2 on p. 294, *ante*.

²The proviso was substituted for the original proviso by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 1 on p. 296, *ante*.

(Chapter II.—The Board of Trustees.—Secs. 16, 17.)

(2) The ¹[Provincial Government] shall, by notification, declare that a Trustee shall cease to be a Trustee—

- (i) if he has become disqualified for appointment or election as a Trustee for any of the reasons mentioned in section 9 ; or
- (ii) if he was elected or appointed as being a member of the Corporation, the Bengal Chamber of Commerce or the Bengal National Chamber of Commerce and if he is, at the date of such notification, no longer a member of the Corporation or such Chamber, as the case may be.

(3) If at any time it appears to the ¹[Provincial Government] that the Chairman has shown himself to be unsuitable for his office, or has been guilty of any misconduct or neglect which renders his removal expedient, it may, by notification, declare that the Chairman shall cease to hold office as such.

Filling of
casual vacancies
in certain cases.

16. If any Trustee be permitted by the Board to absent himself from meetings of the Board for any period exceeding three months,

or if any Trustee, other than the ²[Executive Officer of the Corporation], dies, or resigns the office of Trustee, or ceases to hold the office of Trustee in pursuance of a notification published under section 15,

the vacancy shall be filled, within one month, by a fresh appointment or election under section 5, section 7 or section 8 as the case may be.

Term of office
of Trustees.

17. (1) The term of office of the first Trustees appointed or elected under section 5, section 7 or section 8, other than the Chairman, shall commence on such day as may be appointed by the ¹[Provincial Government].

(2) Subject to the provisions of section 15, the term of office of Trustees other than the ²[Executive Officer of the Corporation] shall be as follows :—

- (a) the Chairman—such period, not less than three years, as may be fixed by the ¹[Provincial Government] ;
- (b) a Trustee appointed or elected in pursuance of section 16 in the place of a Trustee who has been permitted to absent himself from meetings of the Board—the period of the absence of the latter Trustee ;
- (c) other Trustees—three years.

¹See foot-note 2 on p. 294, *ante*.

²See foot-note 1 on p. 296, *ante*.

of 1911.]

(Chapter II.—*The Board of Trustees.*—Secs. 18, 19.)

(3) Any Trustee shall, if not disqualified for any of the reasons mentioned in section 9, be eligible for reappointment or re-election at the end of his term of office.

Conduct of Business.

18. The Board shall meet, and shall from time to time make such arrangements with respect to the place, day, hour, notice, management and adjournment of their meetings, as they may think fit, subject to the following provisions, namely :—

Meetings of Board.

- (a) an ordinary meeting shall be held once at least in every month ;
- (b) the Chairman may, whenever he thinks fit, and shall upon the written request of not less than two other Trustees, call a special meeting ;
- (c) the Chairman shall attend every meeting of the Board unless absent on leave or prevented by sickness or other reasonable cause ;
- (d) no business shall be transacted at any meeting unless at least half of the existing number of the Trustees are present from the beginning to the end of the meeting ;
- (e) the person to preside at a meeting shall be the Chairman, or, in his absence from any meeting, the Trustees present shall choose one of their number to preside ;
- (f) all questions shall be decided by a majority of votes of the Trustees present, the person presiding having a second or casting vote in all cases of equality of votes ;
- (g) if a poll be demanded, the names of the Trustees voting, and the nature of their votes, shall be recorded by the person presiding ;
- (h) minutes of the names of the Trustees present, and of the proceedings, at each meeting shall be kept in a book to be provided for the purpose, which shall be signed at the next ensuing meeting by the person presiding at such meeting and shall be open to inspection by any Trustee during office hours.

19. (1) The Board may associate with themselves, in such manner and for such period as may be prescribed by rules made under section 138, any persons whose assistance or advice they may desire in carrying out any of the provisions of this Act.

Temporary association of members with the Board for particular purposes.

(Chapter 11.—The Board of Trustees.—Secs. 20, 21.)

(2) A person associated with themselves by the Board under sub-section (1) for any purpose shall have a right to take part in the discussions of the Board relative to that purpose, but shall not have a right to vote at a meeting of the Board, and shall not be a member of the Board for any other purpose.

Constitution
and functions
of Committees.

20. (1) The Board may from time to time appoint Committees, consisting of such persons of any of the following classes as they may think fit, namely :—

- (i) Trustees,
- (ii) persons associated with the Board under section 19,
- (iii) other persons whose assistance or advice the Board may desire as members of Committees :

Provided that no Committee shall consist of less than three persons.

(2) The Board may—

- (a) refer to such Committees, for inquiry and report, any matter relating to any of the purposes of this Act, and
- (b) delegate to such Committees, by specific resolution, and subject to any rules made under section 138, any of the powers or duties of the Board.

(3) The Board may at any time dissolve, or, subject to the provisions of sub-section (1), alter the constitution of any such Committee.

(4) Every such Committee shall conform to any instructions from time to time given to them by the Board.

(5) All proceedings of any such Committee shall be subject to confirmation by the Board.

Meetings of
Committees.

21. (1) Committees appointed under section 20 may meet and adjourn as they think proper ; but the Chairman may, whenever he thinks fit, call a special meeting of any Committee, and shall call a special meeting of any Committee upon the written request of not less than two members thereof.

(2) The person to preside at a meeting of a Committee shall be the Chairman if he is a member of the Committee, or, if he is not a member, then the members present shall choose one of their number to preside.

of 1911.]

(Chapter II.—The Board of Trustees.—Secs. 22, 23.)

(3) No business shall be transacted at any meeting of a Committee unless at least half the number of the members of the Committee are present from the beginning to the end of the meeting.

(4) All questions at any meeting of a Committee shall be decided by a majority of votes of the members present, the person presiding having a second or casting vote in all cases of equality of votes.

22. Every Trustee (other than the Chairman), and every person associated with the Board under section 19, shall be entitled to receive a fee of twenty rupees, and every member of a Committee shall be entitled to receive a fee of ten rupees, for each meeting of the Board or the Committee—

Fees for attendance at meetings.

- (i) at which a quorum is present and business is transacted, and
- (ii) which he attends from the beginning to the end thereof, or for such period as the person presiding at the meeting may consider sufficient to justify the payment of the fee :

Provided that the aggregate amount of fees payable to any person in respect of meetings of any kind held during any month shall not exceed such sum as may be prescribed by any rule made under section 137 in this behalf.

23. (1) A Trustee who—

- (a) has directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as is described in sub-section (2) of section 9, in respect of any matter, or
- (b) has acted professionally, in relation to any matter, on behalf of any person having therein any such share or interest as aforesaid,

Trustees and associated members of Board or Committee not to take part in proceedings in which they are personally interested.

shall not vote or take any other part in any proceeding of the Board or any Committee relating to such matter.

(2) If any Trustee, or any person associated with the Board under section 19, or any other member of a Committee appointed under this Act, has, directly or indirectly, any beneficial interest in any land situated in an area comprised in any improvement scheme framed under this Act, or in an area in which it is proposed to acquire land for any of the purposes of this Act,—

- (i) he shall, before taking part in any proceeding at a meeting of the Board or any Committee relating to such area, inform the person presiding at the meeting of the nature of such interest,

[**Ben. Act V**]*(Chapter II.—The Board of Trustees.—Secs. 24-26.)*

- (ii) he shall not vote at any meeting of the Board or any Committee upon any resolution or question relating to such land, and
- (iii) he shall not take any other part in any proceeding at a meeting of the Board or any Committee relating to such area if the person presiding at the meeting considers it inexpedient that he should do so.

Power to
make and
perform
contracts.

Execution of
contracts and
approval of
estimates.

24. The Board may enter into and perform all such contracts as they may consider necessary or expedient for carrying out any of the purposes of this Act.

25. (1) Every such contract shall be made on behalf of the Board by the Chairman :—

Provided that—

- (a) a contract involving an expenditure exceeding one thousand rupees and not exceeding one lakh of rupees shall not be made by the Chairman without the previous sanction of the Board; and
- (b) a contract involving an expenditure exceeding one lakh of rupees shall not be made by the Chairman without the previous sanction of the Board and ¹[Provincial Government].

(2) Every estimate for the expenditure of any sum for carrying out any of the purposes of this Act shall be subject to the approval of the authority who is empowered by sub-section (1) to make or sanction the making of a contract involving the expenditure of a like sum.

(3) Sub-sections (1) and (2) shall apply to every variation or abandonment of a contract or estimate, as well as to an original contract or estimate.

Further
provisions as
to execution of
contracts, and
provision as
to seal of
Board.

26. (1) Every contract made by the Chairman on behalf of the Board shall be entered into in such manner and form as would bind the Chairman if such contract were made on his own behalf, except that the common seal of the Board shall be used (where necessary) ; and every such contract may in the like manner and form be varied or discharged.

(2) Every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees shall be in writing, and shall be sealed.

(3) The common seal of the Board shall remain in the custody of the Secretary to the Board, and shall not be affixed to any contract or other instrument except in the

¹See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter II.—The Board of Trustees.—Secs. 27-29.)

presence of a Trustee (other than the Chairman), who shall attach his signature to the contract or instrument in token that the same was sealed in his presence.

(4) The signature of the said Trustee shall be in addition to the signature of any witness to the execution of such contract or instrument.

(5) a contract not executed as provided in this section shall not be binding on the Board.

27. (1) At least seven days before the Chairman enters into any contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees, he shall give notice by advertisement, in local newspapers inviting tenders for such contract.

Tenders.

(2) In every such case the Chairman shall place before the Board the specifications, conditions and estimates and all the tenders received, specifying the particular tender (if any) which he proposes to accept.

(3) In every case in which the acceptance of a tender would involve an expenditure exceeding one *lakh* of rupees,

the Board shall submit to the ¹[Provincial Government] the specifications, conditions and estimates, and all the tenders received, specifying the particular tender (if any) the acceptance of which they proposed to sanction.

(4) Neither the Board nor the ¹[Provincial Government] shall be bound to sanction the acceptance of any tender which has been made; but the Board, within the pecuniary limits of their powers, as prescribed in section 25, sub-section (1), or the ¹[Provincial Government], may sanction the acceptance of any of such tenders which appears to them, upon a view of all the circumstances, to be the most advantageous, or may direct the rejection of all the tenders submitted to them.

28. The Chairman shall take sufficient security for the due performance of every contract involving an expenditure exceeding one thousand rupees.

Security for performance of contract.

29. (1) The Chairman shall forward to the ¹[Provincial Government] a copy of the minutes of the proceedings of each meeting of the Board, within ten days from the date on which the minutes of the proceedings of such meeting were signed as prescribed in section 18, clause (h).

Supply of documents and information to the Government.

(2) If the ¹[Provincial Government] so directs in any case, the Chairman shall forward to it a copy of all papers which were laid before the Board for consideration at any meeting.

¹See foot-note 2 on p. 294, ante.

[Ben. Act V*(Chapter 11.—The Board of Trustees.—Secs. 30, 31.)*

(3) The ¹[Provincial Government] may require the Chairman to furnish it with—

- (a) any return, statement, estimate, statistics or other information regarding any matter under the control of the Board, or
- (b) a report on any such matter, or
- (c) a copy of any document in charge of the Chairman.

Officers and Servants.

30. The Board shall from time to time prepare, and shall maintain, a statement showing—

- (a) the number, designations and grades of the officers and servants (other than employees who are paid by the day or whose pay is charged to temporary work) whom they consider it necessary and proper to employ for the purposes of this Act,
- (b) the amount and nature of the salary, fees and allowances to be paid to each such officer and servant, and
- (c) the contributions payable under section 146 in respect of each such officer and servant.

Statement of
strength and
remuneration
of staff.

Board to make
rules.

31. The Board shall from time to time make rules—

- (a) fixing the amount and nature of the security to be furnished by any officer or servant of the Board from whom it may be deemed expedient to require security ;
- (b) for regulating the grant of leave of absence, leave-allowances and acting allowances to the officers and servants of the Board ; and
- (c) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Board (other than any ²[servant of the Crown] in respect of whom a contribution is paid under section 146) to contribute to such fund, at such rates and subject to such conditions as may be prescribed by such rules, and for supplementing such contributions out of the funds of the Board :

³Provided that a servant of the Crown employed as an officer or servant of the Board shall not be entitled to leave or leave allowances otherwise than as may be prescribed by the conditions of his service under the Crown relating to transfer to foreign service.

¹See foot-note 2 on p. 294, *ante*.

²These words were substituted for the words "servant of the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws), Orders, 1937.

³The proviso was substituted for the original proviso, *ibid*.

of 1911.]

(Chapter II.—The Board of Trustees.— Secs. 32-35.)

32. Subject to any directions contained in any statement prepared under section 30 and any rules made under section 31, and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Board, and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, shall be vested—

Powers of appointment, etc., in whom vested.

- (a) in the case of officers and servants whose monthly salary does not exceed three hundred rupees—in the Chairman, and
- (b) in other cases—in the Board :

Provided that any officer or servant in receipt of a monthly salary exceeding one hundred rupees who is reduced, suspended or dismissed by the chairman may appeal to the Board, whose decision shall be final.

33. (a) All statements prepared under section 30, so far as they relate to officers carrying a salary of more than one thousand rupees *per mensem*,

Sanction of Provincial Government required to certain statements, rules and orders.

(b) all rules made under clause (b) or clause (c) of section 31, and

(c) all orders passed by the Board under section 32, and relating to any officer appointed to hold an office carrying a salary of more than one thousand rupees *per mensem*, except orders granting leave to, or suspending, any such officer,

shall be subject to the previous sanction of the ¹[Provincial Government.]

34. The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the Board; and, subject to the foregoing sections, shall dispose of all questions relating to the service of the said officers and servants, and their pay, privileges and allowances.

Control by Chairman.

35. (1) The Chairman may, by general or special order in writing, delegate to any officer of the Board any of the Chairman's powers, duties or functions under this Act or any rule made hereunder, except those conferred or imposed upon or vested in him by sections 18, 21, 29, 55, 108, 112, 116, 118, 154 and 158 :

Delegation of certain of Chairman's functions.

Provided as follows :—

- (a) the Chairman shall not delegate his power under section 25 to make on behalf of the Board any contract involving an expenditure exceeding one thousand rupees ;

¹See foot-note 2 on p. 294, *ante*.

[Ben. Act V

Chapter III.—Improvement Schemes and Re-housing Schemes.—Sec 36.)

- (b) the Chairman shall not delegate his power under section 32 to make appointments to offices carrying a salary of more than one hundred rupees *per mensem* ;
- (c) the Chairman shall not delegate to any officer his power under section 32 to grant leave to, or to reduce, suspend, dismiss, or dispense with the services of, any employee, unless such employee was appointed by such officer by virtue of a delegation of the Chairman's powers of appointment conferred by that section.

(2) The exercise or discharge by any officer of any powers, duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman.

CHAPTER III.

IMPROVEMENT SCHEMES AND RE-HOUSING SCHEMES.

When general improvement scheme may be framed.

36. Whenever it appears to the Board, whether upon an official representation made under section 37 or without such a representation,—

- (a) that any buildings in any area which are used, or are intended or are likely to be used, as dwelling-places, are unfit for human habitation, or
- (b) that danger to the health of the inhabitants of buildings in any area, or in any neighbouring buildings, is caused by—
 - (i) the narrowness, closeness and bad arrangement and condition of streets or buildings or groups of buildings in such area, or
 - (ii) the want of light, air, ventilation or proper conveniences in such area, or
 - (iii) any other sanitary defects in such area,

and that the most satisfactory method of dealing with the evils connected with such buildings and the sanitary defects in such area is a general improvement scheme for the re-arrangement and re-construction of the streets and buildings, or some of them, within such area,

the Board may pass a resolution, to the effect that such area is an unhealthy area, and that a general improvement scheme ought to be framed in respect of such area,

and may then proceed to frame such a scheme.

of 1911.]

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Secs. 37, 38.)

37. (1) An official representation referred to in section 36 may be made by the Corporation—

- (a) of their own motion ; or
- (b) on a written complaint by the Health Officer of the Corporation ; or
- (c) in respect of any area comprised in a municipal ward,—on a written complaint signed by twenty-five or more residents of such ward who are liable to pay either the owner's share or the occupier's share of the consolidated rate leviable under the Calcutta Municipal Act ¹[1923].

Authority for making an official representation for a general improvement scheme.

Ben. Act III of 1923.

(2) If the Corporation decide not to make an official representation on any complaint made to them under clause (b) or clause (c), they shall cause a copy of such complaint to be sent to the Board, with a statement of the reasons for their decision.

38. (1) The Board shall consider every official representation made under section 37, and, if satisfied as to the truth thereof and to the sufficiency of their resources, shall decide whether a general improvement scheme to carry such representation into effect should be framed forthwith or not, and shall forthwith intimate their decision to the Corporation.

Consideration of official representations.

(2) If the Board decide that it is not necessary or expedient to frame a general improvement scheme forthwith, they shall inform the Corporation of the reasons for their decision.

(3) If the Board fail, for a period of twelve months after the receipt of any official representation made under section 37 to intimate their decision thereon to the Corporation,

or if the Board intimate to the Corporation their decision that it is not necessary or expedient to frame a general improvement scheme forthwith,

the Corporation may, if they think fit, refer the matter to the ²[Provincial Government].

(4) The ²[Provincial Government] shall consider every reference made to it under sub-section (3), and

- (a) if it considers that the Board ought, under all the circumstances, to have passed a decision within the period mentioned in sub-section (3), shall direct the Board to pass a decision

¹See foot-note 6 on p. 294, *ante*.

²See foot-note 2 on p. 294, *ante*.

[Ben. Act V

(Chapter III.—Improvement Schemes and Re-housing Schemes.
—Secs. 39-41.)

within such further period as the ¹[Provincial Government] may think reasonable, or

- (b) if it considers that it is under all the circumstances, expedient that a scheme should forthwith be framed, shall direct the Board to proceed forthwith to frame a scheme.

(5) The Board shall comply with every direction given by the ¹[Provincial Government] under sub-section (4).

When street scheme may be framed.

39. Whenever the Board are of opinion that, for the purpose of—

- (a) providing building-sites, or
- (b) remedying defective ventilation, or
- (c) creating new, or improving existing, means of communication and facilities for traffic, or
- (d) affording better facilities for conservancy,

it is expedient to lay out new streets or to alter existing streets (including bridges, causeways and culverts), the Board may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as they may think fit.

Matters to be considered when framing improvement schemes.

40. When framing an improvement scheme in respect of any area, regard shall be had to—

- (a) the nature and the conditions of neighbouring areas and of Calcutta as a whole ;
- (b) the several directions in which the expansion of Calcutta appears likely to take place ; and
- (c) the likelihood of improvement schemes being required for other parts of Calcutta.

Matters which must be provided for in improvement schemes.

41. Every improvement scheme shall provide for—

- (a) the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion, be required for the execution of the scheme ;
- (b) the laying out or re-laying out of the land in the said area ;
- (c) such demolition, alteration or reconstruction of buildings, situated on land which it is proposed to acquire in the said area, as the Board may think necessary ;

¹See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter III—Improvement Schemes and Re-housing Schemes.—Secs. 42, 43.)

- (d) the construction of any buildings which the Board may consider it necessary to erect for any purpose other than sale or hire ;
- (e) the laying out or alteration of streets (including bridges, causeways and culverts), if required ; and
- (f) the levelling , paving, metalling, flagging, channelling, sewerage and draining of the said streets, and the provision therein of water, lighting and other sanitary conveniences ordinarily provided in a Municipality.

42. Any improvement scheme may provide for—

- (a) the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion, be affected by the execution of the scheme ;
- (b) raising, lowering or levelling any land in the area comprised in the scheme ;
- (c) the formation or retention of open spaces ; and
- (d) any other matters consistent with this Act, which the Board may think fit.

Matters which may be provided for in improvement schemes.

43. (1) When any improvement scheme has been framed, the Board shall prepare a notice, stating—

- (a) the fact that the scheme has been framed,
- (b) the boundaries of the area comprised in the scheme, and
- (c) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire ¹[and of the land in regard to which it is proposed to recover a betterment fee,] may be seen at reasonable hours.

Preparation, publication and transmission of notice as to improvement scheme, and supply of documents to applicants.

(2) The Board shall—

- (i) cause the said notice to be published weekly for three consecutive weeks in the ²[*Official Gazette*] and in local newspapers, with a statement of the period within which objections will be received, and

¹These words were inserted by s. 3 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act. VIII of 1931).

²See foot-note 5 on p. 295, *ante*.

[Ben. Act V

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Secs. 44, 45.)

- (ii) send a copy of the notice to the ¹[Executive Officer of the Corporation] and to the Chairman of any Municipality constituted under the Bengal Municipal Act, ²[1932], in which any portion of the area comprised in the scheme is situated.

Ben. Act
XV of
1932.

(3) The Chairman shall cause copies of all documents referred to in clause (c) of sub-section (1) to be delivered to any applicant on payment of such fee as may be prescribed by rule made under section 138.

Transmission
to Board of
representation by
corporation
or Municipality
as to
improvement
scheme.

44. The ¹[Executive Officer of the Corporation], and the Chairman of any Municipality to whom a copy of a notice has been sent under clause (ii) of section 43, shall, within a period of sixty days from the receipt of the said copy, forward to the Board any representation which the Corporation or Municipality may think fit to make with regard to the scheme.

Service of notice
as to proposed
acquisition of
land or recovery
of betterment
fee.

45. (1) During the thirty days next following the first day on which any notice is published under section 43 in respect of any improvement scheme, the Board shall serve a notice on—

- (i) every person whose name appears in the municipal assessment-book as being primarily liable to pay the owner's share of the consolidated rate, or the rate on the annual value of holdings, as the case may be, in respect of any land which the Board propose to acquire in executing the scheme ³[or in regard to which they propose to recover a betterment fee] and
- (ii) the occupier (who need not be named) of each premises or holding, entered in the municipal assessment-book, which the Board propose to acquire in executing the scheme.

(2) Such notice shall—

- (a) state that the Board propose to acquire such land ⁴[or to recover such betterment fee] for the purpose of carrying out a general improvement scheme or a street scheme, as the case may be, and
- (b) require such person, if he dissents from such acquisition ⁵[or from the recovery of such betterment

¹See foot-note 1 on p. 296, *ante*.

²This figure was substituted for the figure "1884" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³These words were inserted by s. 4(1) of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

⁴These words were inserted by s. 4(2), *ibid*.

⁵These words in square brackets were inserted by s. 4(3), *ibid*.

of 1911.]

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Secs. 46, 47.)

fee] to state his reasons in writing within a period of sixty days from the service of the notice.

(3) Every such notice shall be signed by, or by the order of the Chairman.

Ben. Act
XV of
1932.

46. The ¹[Executive Officer of the Corporation], and the Chairman of any Municipality constituted under the Bengal Municipal Act, ²[1932], in any part of which this section is for the time being in force, shall, respectively, furnish the Chairman, at his request, with a copy of, or extracts from, the municipal assessment-book at such charges as may be fixed by rule made under section 137.

Furnishing of copy of, or extracts from, the municipal assessment-book.

47. (1) After the expiry of the periods respectively prescribed under section 43, clause (i), and by section 44 and section 45, clause (b), in respect of any improvement scheme, the Board shall consider any objection, representation and statement of dissent received thereunder, and, after hearing all persons making any such objection, representation or dissent who may desire to be heard, the Board may either abandon the scheme or apply to the ³[Provincial Government] for sanction to the scheme, with such modifications (if any) as the Board may consider necessary.

Abandonment of improvement scheme, or application to Provincial Government to sanction it.

(2) Every application submitted under sub-section (1) shall be accompanied by—

- (a) a description of, and full particulars relating to, the scheme, and complete plans and estimates of the cost of executing the scheme ;
- (b) a statement of the reasons for any modifications made in the scheme as originally framed ;
- (c) a statement of objections (if any) received under section 43 ;
- (d) any representation received under section 44 ;
- (e) a list of the names of all persons (if any) who have dissented, under section 45, clause (b), from the proposed acquisition of their land ⁴[or from the proposed recovery of a betterment fee] and a statement of the reasons given for such dissent ; and
- (f) a statement of the arrangements made or proposed by the Board for the re-housing of persons of the poorer and working classes who are likely to be displaced by the execution of the scheme.

¹See foot-note 1 on p. 296, *ante*.

²See foot-note 2 on p. 312, *ante*.

³See foot-note 2 on p. 294, *ante*.

⁴These words were inserted by s. 5 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

(Chapter III.—Improvement Schemes and Re-housing Schemes.
—Secs. 48-51.)

(3) When any application has been submitted to the ¹[Provincial Government] under sub-section (1), the Board shall cause notice of the fact to be published for two consecutive weeks in the ²[Official Gazette] and in local newspapers.

Power to
sanction or
reject
improvement
scheme.

48. The ¹[Provincial Government] may sanction, either with or without modification, or may refuse to sanction, any improvement scheme submitted to it under section 47.

Notification of
sanction to
improvement
scheme.

49. (1) Whenever the ¹[Provincial Government] sanctions an improvement scheme, it shall announce the fact by notification, and the Board shall forthwith proceed to execute the scheme,

(2) The publication of a notification under sub-section (1), in respect of any scheme, shall be conclusive evidence that the scheme has been duly framed and sanctioned.

Alteration of
improvement
scheme after
sanction.

50. At any time after any improvement scheme has been sanctioned by the ¹[Provincial Government], and before it has been carried into execution, the Board may alter it :

Provided as follows :—

(a) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than five *per cent.* of such cost, such alteration shall not be made without the previous sanction of the ¹[Provincial Government];

(b) if any alteration involves the acquisition, otherwise than by agreement, of any land the acquisition of which has not been sanctioned by the ¹[Provincial Government], the procedure prescribed in the foregoing sections of this chapter shall, so far as applicable, be followed, as if the alteration were a separate scheme ;

³(c) if, owing to changes made in the course of a scheme, any land not previously liable under the scheme to the payment of a betterment fee, becomes liable to such payment, the provisions of sections 43, 45 and 47 shall, so far as they are applicable, be followed in any such case.

Combination of
improvement
schemes.

51. Any number of areas in respect of which improvement schemes have been, or are proposed to be framed, may at any time be included in one combined scheme.

¹See foot-note 2 on p. 294, *ante*.

²See foot-note 5 on p. 295, *ante*.

³Clause (c) was added by s. 6 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

of 1911.]

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Secs. 52-54.)

52. (1) The Board may frame schemes (herein called re-housing schemes) for the construction, maintenance and management of such and so many dwellings and shops as they may consider ought to be provided for persons of the poorer and working classes who—

Re-housing persons displaced by improvement schemes.

- (a) are displaced by the execution of any improvement scheme sanctioned under this Act, or
- (b) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the ¹[Provincial Government] for sanction, under this Act.

(2) Every re-housing scheme shall be submitted to the ¹[Provincial Government] who may either sanction it, with or without modification, or refuse to sanction it.

(3) The Board shall not themselves construct dwellings or shops under a re-housing scheme unless they are satisfied, after due inquiry, that no other person is willing and able to construct them and is prepared to construct, maintain and manage them under the control of the Board.

53. No street laid out or altered by the Board shall be of less width than—

Width of streets.

- (a) forty feet, if the street be intended for carriage traffic, or
- (b) twenty feet, if the street be intended for foot traffic only :

Provided as follows :—

- (i) the width of an existing street need not be increased to the minimum required by this section, if the Board consider it impracticable to do so ;
- (ii) nothing in this section shall be deemed to prevent the Board from laying out service passages for sanitary purposes of any width less than twenty feet.

54. (1) Whenever any building, or any street, square or other land, or any part thereof, which—

- (a) is situated in the Calcutta Municipality and is vested in the Corporation, or
- (b) is situated in any part of any Municipality constituted under the Bengal Municipal Act, ³[1923],

Transfer to Board, for purposes of improvement scheme, of building or land vested in the Corporation or in the Commissioners of a Municipality.

Ben. Act
XV of 1932.

¹See foot-note 2 on p. 294, *ante*.

²Section 54 was substituted for the original section by s. 2 of the Calcutta Improvement (Amendment) Act, 1923 (Ben. IX of 1923).

³See foot-note 2 on p. 312, *ante*.

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Sec. 54.)

in which this section is for the time being in force, and is vested in the Commissioners of that Municipality,

is within the area of any improvement scheme and is required for the purposes of such scheme, the Board shall give notice accordingly to the ¹[Executive Officer of the Corporation] or the Chairman of such Municipality, as the case may be, and such building, street, square, other land or part, shall thereupon vest in the Board subject in the case of any building or any land, not being a street or square, to the payment of compensation, if any, to the Corporation or to such Commissioners, as the case may be, under sub-section (3).

(2) Where any land vests in the Board under the provisions of sub-section (1) and the Board make a declaration to the Corporation that such land will be retained by the Board only until it reverts in the Corporation as part of a street or an open space, under a declaration made by the Corporation under sub-section (1) of section 65 or a resolution passed by the Board under sub-section (2) of section 65, as the case may be, no compensation shall be payable by the Board to the Corporation in respect of that land.

(3) Where any land or building vests in the Board under sub-section (1) and no declaration is made by the Board that the land will be so retained, the Board shall pay to the Corporation, or to the Commissioners, as the case may be, as compensation for the loss resulting from the transfer of such land or building to the Board, a sum equal to the market value of the said land or building at the time when the general declaration in respect of other lands included in the scheme is made under the provisions of section 6 of the Land Acquisition Act, 1894, as amended I of 1894. by this Act, and where any building, situated on land in respect of which a declaration has been made by the Board under sub-section (2), is vested in the Board under sub-section (1), like compensation shall be payable in respect of such building by the Board.

(4) If, in any case where the Board have made a declaration to the Corporation in respect of any land under sub-section (2), the Board retain or dispose of the land contrary to the terms of the declaration, so that the land does not revert in the Corporation as contemplated under such declaration, like compensation shall be payable by the Board to the Corporation in respect of such land for the loss resulting from the non-transfer of such land to the Corporation, such compensation not to be less than the market value which would have been payable for the said land under the provisions of sub-section (3).

¹See foot-note 1 on p. 296, *ante*.

of 1911.]

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Sec 55.)

(5) If any question of dispute arises—

- (a) as to whether compensation is payable under sub-section (3) or sub-section (4), or
- (b) as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) or sub-section (4), or
- (c) as to whether any building or street, or square or other land, or any part thereof is required for the purposes of the scheme,

the matter shall be referred to the ¹[Provincial Government], whose decision shall be final.

Ben. Act
XV of
1932.

55. (1) Whenever any street or square or part thereof which is not vested in the Board or in the Corporation or in the Commissioners of any Municipality constituted under the Bengal Municipal Act, ²[1932], is required for executing any improvement scheme, the Board shall cause to be affixed in a conspicuous place in or near such street, square or part, a notice signed by the Chairman, and

Transfer of private street or square to Board for purposes of improvement scheme.

- (a) stating the purpose for which the street, square or part is required, and
- (b) declaring that the Board will, on or after a date to be specified in the notice, take over charge of such street, square or part from the owner thereof;

and shall simultaneously send a copy of such notice to the owner of such street, square or part.

(2) After considering and deciding all objections (if any) received in writing before the date so specified, the Board may take over charge of such street, square or part from the owner thereof; and the same shall thereupon vest in the Board.

(3) When the Board alter or close any street or square or part thereof which has vested in them under sub-section (2), they shall pay reasonable compensation to the previous owner for the loss of his rights therein.

(4) If the alteration or closing of any such street, square or part causes damage or substantial inconvenience to

¹See foot-note 2 on p. 294, *ante*.

²See foot-note 2 on page 312, *ante*.

[Ben. Act V

(Chapter III.—Improvement Schemes and Re-housing Schemes.—56-58.)

owners of property adjacent thereto, or to residents in the neighbourhood, the Board—

- (i) shall forthwith provide some other reasonable means of access for the use of persons who were entitled to use such street, square or part as a means of access to any property or place, and,
- (ii) if the provision of such means of access does not sufficiently compensate any such owner or resident for such damage or inconvenience, shall also pay him reasonable compensation in money.

Provision of drain or waterwork to replace another situated on land vested in the Board under section 54 or section 55.

56. (1) When any building, or any street, square or other land, or any part thereof, has vested in the Board under section 54 or section 55, no municipal drain or waterwork therein shall vest in the Board until another drain or waterwork (as the case may be), if required, has been provided by the Board, to the satisfaction of the ¹[Corporation of Calcutta] or of the Commissioners of the Municipality constituted under the Bengal Municipal Act, ²[1932], as the case may be, in place of the former drain or work.

Ben. Act
XV of
1932.

(2) If any question or dispute arises as to whether another drain or waterwork is required, or as to the sufficiency of any drain or waterwork provided by the Board, under sub-section (1), the matter shall be referred to the ³[Provincial Government], whose decision shall be final.

Bar to application of certain sections of the Calcutta Municipal Act, 1923, to streets vested in the Board. Repair and watering of streets vested in the Board.

57. (1) ⁴[Sections 296, 297 and 307, and clause (c) of section 306, of the Calcutta Municipal Act, 1923] shall not apply to any street which is vested in the Board.

Ben. Act
III of
1923.

(2) ⁵[Rules 4 and 5 in Schedule XVI to] the said Act shall not apply when any drain, pavement or surface referred to in the said ⁶[rule 4] is opened or broken up by the Board or when any public street is under construction by the Board.

58. Whenever the Board allow any street vested in them to be used for public traffic,—

- (a) they shall, as far as practicable, keep the street in good repair and do all things necessary for the safety and convenience of persons using it, and

¹These words were substituted for the words "General Committee" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²See foot-note 2 on p. 312, *ante*.

³See foot-note 2 on p. 294, *ante*.

⁴These words and figures were substituted for certain words and figures by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁵These words and figures were substituted for the words and figures "Sections 345 and 346 of", *ibid*.

⁶This word and figure were substituted for the word and figure "section 345", *ibid*.

of 1911.]

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Secs. 59-61.)

- (b) they shall cause the street to be watered, if they consider it necessary to do so for the public convenience.

59. Whenever any drain in, or the pavement or surface of, any street vested in the Board is opened or broken up by the Board for the purpose of carrying on any work,

or whenever the Board allow any street which they have under construction to be used for public traffic,

the Board shall cause the place to be fenced and guarded and to be sufficiently lighted during the night, and shall take proper precautions for guarding against accident by shoring up and protecting adjoining buildings,

and shall, with all convenient speed, complete the said work, fill in the ground, and repair the said drain, pavement or surface, and carry away the rubbish occasioned thereby or complete the construction of the said street, as the case may be.

Guarding and lighting when street vested in the Board is opened or broken up, or when street is under construction and speedy completion of work.

60. (1) When any work referred to in section 59 is being executed by the Board in any public street vested in them, or when any other work which may lawfully be done is being executed by the Board in any street vested in them, the Board may direct that such street shall, during the progress of such work, be either wholly or partially closed to traffic generally or to traffic of any specified description.

Prevention or restriction of traffic in street vested in the Board, during progress of work.

(2) When any such direction has been given, the Board shall set up in a conspicuous position in or near the street and order prohibiting traffic to the extent so directed, and shall fix such bars, chains or posts across or in the street as they may think proper for preventing or restricting traffic therein, after notifying in local newspapers their intention to do so.

61. (1) When any work is being executed by the Board in any public street vested in them, the Board shall, so far as may reasonably be practicable, make adequate provision for—

Provision of facilities, and payment of compensation, when work is executed by Board in public street vested in them.

- (a) the passage or diversion of traffic ;
- (b) securing access to all premises approached from such street ; and
- (c) any drainage, water-supply or means of lighting which is interrupted by reason of the execution of the work.

(2) The Board shall pay reasonable compensation to any person who sustains special damage by reason of the execution of any such work.

[Ben. Act V

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Secs. 62, 63.)

Power of Board to turn or close public street or square vested in them.

62. (1) The Board may—

- (a) turn, divert, discontinue the public use of, or permanently close, any public street vested in them or any part thereof, or
- (b) discontinue the public use of, or permanently close, any public square vested in them, or any part thereof.

(2) Whenever the Board discontinue the public use of or permanently close, any public street vested in them or any part thereof, they shall pay reasonable compensation to every person who was entitled, otherwise than as a mere licensee, to use such street or part as a means of access and has suffered damage from such discontinuance or closing.

(3) Whenever the Board discontinue the public use of, or permanently close, any public square vested in them, or any part thereof, they shall pay reasonable compensation to every person—

- (a) who was entitled, otherwise than as a mere licensee, to use such square or part as a means of access, or
- (b) whose immovable property was ventilated by such square or part,

and who has suffered damage,—

- (i) in case (a), from such discontinuance or closing' or
- (ii) in case (b), from the use to which the Board have put such square or part.

(4) In determining the compensation payable to any person under sub-section (2) or sub-section (3), the Board shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other public street or square at or about the same time that the public street or square or part thereof, on account of which the compensation is paid, is discontinued, or closed.

(5) When any public street or square vested in the Board, or any part thereof, is permanently closed under sub-section (1), the Board may sell, or lease so much of the same as is no longer required.

Projected public streets.

63. (1) The Board may from time to time in regard to any area—

- (a) within the Calcutta Municipality, or
- (b) in the neighbourhood of the said Municipality,

¹S. 63 was substituted for the original section by s. 3 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

of 1911.]

(Chapter III.—*Improvement Schemes and Re-housing Schemes.*—Sec. 63.)

make plans of proposed public streets showing the direction of such streets, the street alignment and building line (if any), on each side of them, their intended width and such other details as may appear desirable.

(2) When a plan of a proposed public street has been made under sub-section (1), the Board shall prepare a notice stating—

- (a) the fact that such plan has been made,
- (b) particulars of the land (shown in such plan) through which the proposed public street will pass,
- (c) the place at which the said plan and particulars may be seen at reasonable hours, and
- (d) the period (which shall be not less than sixty days within which objections to the said plan may be submitted to the Board :

and the Board shall thereupon—

- (i) cause the said notice to be published weekly for two consecutive weeks in the ¹[*Official Gazette*] and in local newspapers, and in such other manner as the Board may direct, and
- (ii) forward a copy of the said notice to any person whose name appears in the municipal assessment-book as being primarily liable to pay the owner's share of the consolidated rate, or the rate on the annual value of holdings, as the case may be, in respect of any land included within the proposed public street, and
- (iii) forward a copy of the said notice and of the plan to which it relates to the ²[Executive Officer of the Corporation] and, if any area in the neighbourhood of the Calcutta Municipality is included in such plan, to the Chairman of the local authority administering any portion of such area, and
- (iv) cause copies of the said notice and plan to be delivered to any applicant on payment of such fee as may be prescribed by rule made under section 138.

¹See foot-note 5 on p. 295, *ante*.

²See foot-note 1 on p. 296, *ante*.

[Ben. Act V

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Sec. 63.)

(3) On or after a date (not being less than sixty days from the date of the first publication of the notice) to be appointed by the Board in this behalf, the Board shall consider—

- (a) all objections in writing received from any person affected by the proposed public street contemplated by such plan, and
- (b) any representation in regard to such street made to the Board by the Corporation or the aforesaid local authority ;

and the Board may thereupon either withdraw the plan or apply to the ¹[Provincial Government] for sanction thereto with such modification (if any) as the Board may consider necessary.

(4) If the Board apply for sanction as provided in sub-section (3), they shall simultaneously forward to the ¹[Provincial Government] a full statement of all objections and representations made to them under the said sub-section.

(5) When a plan of a proposed public street has been submitted to the ¹[Provincial Government] under sub-section (3), the Board shall cause notice of the fact to be published for two consecutive weeks in the ²[Official Gazette] and in local newspapers.

(6) The ¹[Provincial Government] may sanction, either with or without modification, or may refuse to sanction, any plan of a proposed public street submitted to it under sub-section (3).

(7) Whenever the ¹[Provincial Government] sanctions a plan of a proposed public street, it shall announce the fact by notification, and the publication of such notification shall be conclusive evidence that the plan has been duly made and sanctioned ;

and the proposed public street to which such notification refers shall be deemed to be a projected public street, and shall be so deemed until—

- (a) such street has been declared, under section 65 or section 66, as the case may be, to be a public street, or
- (b) the said notification has been cancelled by another notification :

Provided that such cancellation shall not affect the validity of any action taken by the Board in pursuance of the said notification.

(8) If any person desires to erect, re-erect or add to any wall (exceeding ten feet in height) or building which

¹See foot-note 2 on p. 294, *ante*.

²See foot-note 5 on p. 295, *ante*.

of 1911.]

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Sec. 63.)

falls within the street alignment or building line of a projected public street shown in any plan sanctioned by the ¹[Provincial Government] under this section, he shall submit an application in writing to the Chairman for permission so to do :

Provided as follows :—

- (i) no such application shall be necessary for permission to erect or re-erect, between a building line and the street alignment,—
 - (a) a porch or balcony, or
 - (b) along not more than one-third of the frontage, an outhouse not exceeding fifteen feet in height ;
- (ii) nothing in this sub-section shall relieve any person from the liability to obtain such sanction as it may be necessary to obtain under any law for the time being in force from any local authority.

(9) The Chairman shall in no case refuse an application submitted under sub-section (8) if the applicant executes an agreement binding himself and his successors in interest to remove, without compensation, any wall or building to which that application relates, in the event of the Board—

- (a) deciding (at anytime after an improvement scheme has been sanctioned under section 48 for an area within which such building or wall is situate) that the said wall or building, or any portion thereof, ought to be removed, and
- (b) calling upon the owner for the time being, by written notice, to remove the same within a time (not being less than sixty days from the date of the service of the notice) to be specified in the said notice.

(10) If the Chairman does not, within thirty days from the receipt of an application submitted under sub-section (8), grant or refuse the permission applied for thereunder, such permission shall be deemed to have been granted.

(11) If the Chairman refuses permission to any person to erect, re-erect or add to any wall or building as aforesaid which falls—

- (i) within the street alignment, or
- (ii) between the street alignment and the building line

of a projected public street, the owner of the land on which it was sought to erect, re-erect or add to such wall or

¹See foot-note 2 on p. 294, *ante*.

[**Ben. Act V***(Chapter III.—Improvement Schemes and Re-housing Schemes.—Sec. 64.)*

building, may call upon the Board, at any time within, three months from the date of such refusal either—

- (a) to pay him compensation for any damage sustained by him in consequence of such refusal, or
- (b) to acquire so much of his land as falls within the street alignment, or between the street alignment and the building line, as the case may be ;

and the Board shall thereupon—

in case (a), make full compensation to the said owner for any damage which he may be found to have sustained in consequence of such refusal, and

in case (b), forthwith take steps to acquire the said land

Provided that, in the case of such land as falls within the street alignment only, it shall be optional with the Board to acquire the same in lieu of paying compensation therefor.

(12) An appeal shall lie to the Board from any refusal by the Chairman to grant an application under this section.

Reference of
disputes to
Tribunal.

64. (1) If any question or dispute arises—

- (a) between the Board and the previous owner of any street or square or part thereof which has vested in the Board under section 55 and has been altered or closed by them, as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of that section, or
- (b) between the Board and any person who was entitled, otherwise than as a mere licensee, to use as a means of access any street or square or part thereof which has vested in the Board under section 55,
 - (i) as to whether the alteration or closing of such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto or to residents in the neighbourhood, or
 - (ii) as to whether the other means of access provided or proposed to be provided under sub-section (4) of the said section 55 are reasonably sufficient, or
 - (iii) as to the sufficiency of any compensation paid or proposed to be paid under the said sub-section (4), or

of 1911.]

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Sec. 65.)

- (c) between the Board and any person, as to the sufficiency of any compensation paid or proposed to be paid to him under section 61, section 62 or section 63,

the matter shall be determined by the Tribunal, if referred to it, either by the Board or by the claimant, within a period of three months from—

in case (a) or case (b) —the date on which the street or square or part thereof was altered or closed by the Board, or

in case (c) —the date on which the said person was informed of the decision of the Board fixing the amount of compensation to be paid to him;

and the determination of the Tribunal shall be final.

(2) If a reference to the Tribunal be not made within the period prescribed by sub-section (1), the decision of the Board shall be final.

(3) For the purpose of determining any matter referred to it under sub-section (1), the Tribunal shall have all the powers with regard to witnesses, documents and costs which it would have if the Land Acquisition Act, 1894, as modified by section 71 of this Act, were applicable to the case.

I of 1894.

65. (1) Whenever the ¹[Corporation of Calcutta] are satisfied—

- (a) that any street laid out or altered by the Board has been duly levelled, paved, metalled, flagged, channelled, sowered and drained in the manner provided in the plans sanctioned by the ²[Provincial Government] under section 48, and
- (b) that such lamps, lamp-posts and other apparatus as the ¹[Corporation of Calcutta] consider necessary for lighting of such street and as ought to be provided by the Board have been so provided, and
- (c) that water and other sanitary conveniences ordinarily provided in a Municipality have been duly provided in such street,

Vesting in Corporation of streets laid out or altered, and open spaces provided, by the Board under an improvement scheme.

the ¹[Corporation of Calcutta] shall³ * * * after informing the Board of their intention to do so, by written notice affixed in some conspicuous position in such

¹See foot-note 1 on p. 318, *ante*.

²See foot-note 2 on p. 294, *ante*.

³The words "make a report to the Corporation and the Corporation shall thereupon" were repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

[Ben. Act V]

(Chapter III.—Improvement Schemes and Re-housing Schemes.—Chapter IV.—Acquisition and disposal of Land.—Secs. 66-68.)

street, declare the street to be a public street; and the street shall thereupon vest in the Corporation, and shall thenceforth be maintained, kept in repair, lighted and cleansed by the Corporation.

(2) When any open space for purposes of ventilation or recreation has been provided by the Board in executing any improvement scheme, it shall, on completion, be transferred to the Corporation by resolution of the Board, and shall thereupon vest in, and be maintained at the expense of the Corporation:

Provided that the ¹[Corporation of Calcutta] may require the Board before any such open space is so transferred, to enclose, level, turf, drain and lay out such space and provide footpaths therein, and, if necessary, to provide lamps and other apparatus for lighting it.

(3) If any difference of opinion arises between the Board and the ¹[Corporation of Calcutta] in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the ²[Provincial Government] whose decision shall be final.

Application of
section 65 to
other
Municipalities.

66. If section 65 be extended, by notification, under section 1, sub-section (3), to any Municipality in the neighbourhood of the Calcutta Municipality, it shall be construed as if the references therein to the General Committee and the Corporation were references to the Commissioners of the former Municipality.

Power of
Board to
retain service
passages.

67. Notwithstanding anything contained in section 65 or section 66, the Board may retain any service passage which they have laid out for sanitary purposes, and may enter into an agreement with the Corporation or any other person for the supervision, repair, lighting and general management of any passage so retained.

CHAPTER IV.

ACQUISITION AND DISPOSAL OF LAND.

Acquisition by agreement.

Power to
purchase or
lease by
agreement.

68. The Board may enter into an agreement with any person for the purchase or leasing by the Board from such person of any land which the Board are authorized to acquire, or any interest in such land.

¹See foot-note 1 on p. 318, *ante*.

²See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter IV.—Acquisition and Disposal of Land.—
Secs. 69-72.)

Compulsory Acquisition.

- I of 1894. **69.** The Board may, with the previous sanction of the ¹[Provincial Government], acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act. Power to acquire land under the Land Acquisition Act, 1894.
- 70.** A Tribunal shall be constituted, as provided in section 72, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894. Tribunal to be constituted.
- 71.** For the purpose of acquiring land under the said Act for the Board,— Modification of the Land Acquisition Act, 1894.
- (a) the Tribunal shall (except for the purposes of section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act ;
 - (b) the said Act shall be subject to the further modifications indicated in the schedule ;
 - (c) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and
 - (d) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall be final.
- Act V of 1908. **72.** (1) The said Tribunal shall consist of a President and two assessors. Constitution of Tribunal.
- (2) The President of the Tribunal shall be either—
- (a) a member of the Judicial Branch of the Imperial or Provincial Civil Service, of not less than ten years' standing in such service who has, for at least three years, served as District Judge or held judicial office not inferior to that of a Subordinate Judge ; or

¹See foot note 2 on p. 294, *ante*.

(Chapter IV.—Acquisition and Disposal of Land.—Secs. 73, 74.)

- (b) a barrister, advocate or pleader of not less than ten years' standing, who has practised as an advocate or pleader in the Calcutta High Court.

(3) The President of the Tribunal and one of the assessors shall be appointed by the ¹[Provincial Government], and the other assessor shall be appointed by the Corporation, or, in default of the Corporation, by the ¹[Provincial Government]:

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or is, for any of the reasons mentioned in section 9, disqualified for appointment as a Trustee.

(4) The term of office of each member of the Tribunal shall be two years; but any member shall, subject to the proviso to sub-section (3), be eligible for reappointment at the end of that term.

(5) The ¹[Provincial Government] may, on the ground of incapacity or misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as a member of the Tribunal.

(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other unavoidable cause, the ¹[Provincial Government] or (if the person whose place is to be filled was appointed by the Corporation) the Corporation, or, in default of the Corporation, the ¹[Provincial Government] shall forthwith appoint a fit person to be a member in his place.

(7) All appointments made under this section shall be published by notification.

Remuneration
of members of
Tribunal.

73. Each member of the Tribunal shall be entitled to receive such remuneration, either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the ¹[Provincial Government] may prescribe.

Officers and
servants of
Tribunal.

74. (1) The President of the Tribunal shall, from time to time, prepare a statement showing—

- (a) the number and grades of the clerks and other officers and servants whom he considers should be maintained for carrying on the business of the Tribunal,
- (b) the amount of the salary to be paid to each such officer and servant, and
- (c) the contributions payable under section 146 in respect of each such officer and servant.

¹See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter IV.—Acquisition and Disposal of Land.—Secs. 75, 76.)

(2) The President of the Tribunal shall, from time to time, make rules—

- (i) for regulating the grant of leave of absence, leave-allowances and acting-allowances to the officers or servants of the Tribunal; and
- (ii) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Tribunal (other than any ¹[servant of the Crown] in respect of whom a contribution is paid under section 146) to contribute to such fund, at such rates and subject to such conditions, as may be prescribed by such rules, and, with the sanction of the Board for supplementing such contributions out of the funds of the Board:

²Provided that a servant of the Crown employed as an officer or servant of the Tribunal shall not be entitled to leave or leave allowances otherwise than as may be prescribed by the conditions of his service under the Crown relating to transfer to foreign service.

(3) All statements prepared under sub-section (1), and all rules made under sub-section (2), shall be subject to the previous sanction of the ³[Provincial Government].

(4) Subject to any directions contained in any statement prepared under sub-section (1) and any rules made under sub-section (2), and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

75. The remuneration prescribed under section 73 for members of the Tribunal, and the salaries, leave-allowances and acting-allowances prescribed under section 74 for officers and servants of the Tribunal, shall be paid by the Board to the President of the Tribunal for distribution.

Payments by Board on account of Tribunal.

76. (1) The President of the Tribunal may, from time to time, with previous sanction of the ³[Provincial Government], make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by the Tribunal.

Power to make rules for Tribunal.

(2) All such rules shall be published by notification.

Act V of 1908.

¹These words were substituted for the words "servant of the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This proviso was substituted for the original proviso, *ibid*.

³See foot-note 2 on p. 294, *ante*.

(Chapter IV.—Acquisition and Disposal of Land.—Secs. 77, 78.)

Award of Tribunal how to be determined.

77. (1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, I of 1894, 1894,—

- (a) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail ;
- (b) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary ; and when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal ; and
- (c) notwithstanding anything contained in the foregoing clauses, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by the Court of Small Causes of Calcutta as if it were a decree of that Court.

Abandonment of Acquisition.

Abandonment of acquisition in consideration of special payment.

78. (1) In any case in which the '[Provincial Government] has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.

(2) The Board shall admit every such application if it—

- (a) reaches them before the time fixed by the Collector, under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and
- (b) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

(3) If the Board decide to admit any such application, they shall forthwith inform the Collector ; and the Collector shall thereupon stay for a period of three months all further

¹See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter IV.—Acquisition and Disposal of Land.—
Sec. 78.)

proceedings for the acquisition of the land, and the Board shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

I of 1894.

(4) Within the said period of three months, or, with the permission of the Board, at any time before the Collector has taken possession of the land, under section 16 of the Land Acquisition Act, 1894, the person from whom the Board have arranged to accept the sum so fixed may, if the Board are satisfied that the security offered by him is sufficient, execute an agreement with the Board, either—

- (i) to pay the said sum three years after the date of the agreement, or
- (ii) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest ¹[at such rate not exceeding six *per cent. per annum* as the Provincial Government² may fix by notification,] and to make the first annual payment of such interest four years after the date of the agreement :

Provided that the Board may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(5) When any agreement has been executed in pursuance of sub-section (4), or when any payment has been accepted in pursuance of the proviso to that sub-section, in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(6) Every payment due from any person under any agreement executed under sub-section (4) shall be a charge on the interest of that person.

(7) If any instalment of interest payable under an agreement executed in pursuance of clause (ii) of sub-section (4) be not paid on the date on which it is due, the sum fixed by the Board under sub-section (3) shall be payable on that date, in addition to the said instalment.

(8) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (4), any person may pay off the charge created thereby, with interest, ³[at the rate fixed under the provisions of that clause] up to the date of such payment.

¹These words were substituted for the words "at the rate of six *per cent. per annum*" by s. 2(a) of the Calcutta Improvement (Amendment) Act, 1934 (Ben. Act II of 1935).

²The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "at the rate of six *per cent. per annum*" by s. 2(b) of the Calcutta Improvement (Amendment) Act, 1934 (Ben. Act II of 1935).

(Chapter IV.—Acquisition and Disposal of Land.—
Sec 78A.)

(9) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (4), no suit with respect to such agreement shall be brought against the Board by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land.

¹(10) Notwithstanding anything contained in clause (ii) of sub-section (4) or in sub-section (8) the rate of interest payable, under the provisions of that clause or that sub-section, as the case may be, shall be, or continue to be, four *per cent. per annum* in cases where the sum, in consideration of which the acquisition of the land has been abandoned, has been fixed under sub-section (3) before the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, and the agreement in respect of the payment of the same is executed before, on or within two months after, that date.

Ben. Act
IX of 1923.

²(10) Notwithstanding anything contained in clause (ii) of sub-section (4) or in sub-section (8), the rate of interest payable under the provisions of that clause or that sub-section, as the case may be, shall be, or continue to be, six *per cent. per annum* in cases where the sum, in consideration of which the acquisition of the land has been abandoned, has been fixed under sub-section (3) on or after the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, but before the date of the commencement of the Calcutta Improvement (Amendment) Act, 1934, and the agreement in respect of the payment of the same is executed during the period commencing with the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, and ending two months after the date of the commencement of the Calcutta Improvement (Amendment) Act, 1934.

Ben. Act
II of 1935.

³*Betterment fee.*

Payment of
betterment fee.

³78A. (1) When by the making of any improvement scheme, any land in the area comprised in the scheme which is not required for the execution thereof will, in the opinion of the Board, be increased in value, the Board, in framing the scheme, may, in lieu of providing for the acquisition of such land, declare that a betterment fee shall be payable

¹Sub-section (10) was inserted by s. 3(2) of the Calcutta Improvement (Amendment) Act, 1923 (Ben. Act IX of 1923).

²Sub-section (11) was added by s. 2(c) of the Calcutta Improvement (Amendment) Act, 1934 (Ben. Act II of 1935).

³This sub-heading and sections 78A, 78B, 78C, 78D, 78E, 78F and 78G were inserted by s. 7 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

of 1911.]

*(Chapter IV.—Acquisition and Disposal of Land.—
Secs. 78B, 78C.)*

by the owner of the land or any person having an interest therein in respect of the increase in value of the land resulting from the execution of the scheme.

(2) Such betterment fee shall be an amount equal to one-half of the increase in value of the land resulting from the execution of the scheme, and shall be calculated upon the amount by which the value of the land on the completion of the execution of the scheme estimated as if the land were clear of buildings exceeds the value of the land prior to the execution of the scheme estimated in like manner.

178B. (1) When it appears to the Board that an improvement scheme is sufficiently advanced to enable the amount of the betterment fee to be determined, the Board shall by a resolution passed in this behalf declare that for the purpose of determining such fee the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to every person on whom a notice in respect of the land to be assessed has been served under clause (i) of sub-section (1) of section 45 that the Board propose to assess the amount of the betterment fee payable in respect of such land under section 78A.

Assessment of
betterment fee
by Board.

(2) The Board shall then assess the amount of betterment fee payable by each person concerned after giving such person an opportunity to be heard and such person shall within three months from the date of receipt of notice in writing of such assessment from the Board, inform the Board by a declaration in writing whether he accepts or dissents from the assessment.

(3) When the assessment proposed by the Board is accepted by the person concerned within the period specified in sub-section (2), such assessment shall be final.

(4) If the person concerned dissents from the assessment made by the Board or fails to give the Board the information required by sub-section (2) within the period specified therein, the matter shall be determined by arbitrators in the manner provided by section 78C.

178C. (1) For the determination of the matter referred to in sub-section (4) of section 78B, the ²[Provincial Government] shall constitute a panel of arbitrators consisting of two parts, the first part of which shall be composed of persons having special knowledge of the valuation of land and the second part of other suitable persons.

Settlement of
betterment fee
by arbitrators.

¹See foot-note 3 on p. 332, *ante*.

²See foot-note 2 on p. 294, *ante*.

*(Chapter IV.—Acquisition and Disposal of Land.—
Sec. 78D.)*

(2) When the Board have, in accordance with the provisions of section 78B, assessed the amount of betterment fee payable by all persons in respect of land in the area comprised in the scheme, the Board shall serve a notice on all those persons who have dissented from the assessment made by the Board, requiring them to meet at such time and place as may be fixed by the Chairman for the purpose of electing an arbitrator.

(3) For each scheme there shall be a body of two arbitrators, one of whom shall be elected by vote by the persons present at the meeting referred to in sub-section (2) from one part of the panel, and the other shall be appointed by the ¹[Provincial Government] from the other part of the panel :

Provided that for the purposes of a particular scheme the ¹[Provincial Government] may, prior to the election referred to in this sub-section, if it thinks fit, modify either part of the panel.

(4) In the event of a difference of opinion on any matter between the two arbitrators, a third arbitrator shall be selected by lot from the first part of the panel, and the matter shall be decided by the votes of the majority of the three arbitrators.

(5) If an arbitrator dies, resigns, becomes disqualified, is removed under sub-section (6), or refuses to perform or in the opinion of the ¹[Provincial Government] neglects to perform or becomes incapable of performing his functions, the authority who elected or appointed him shall forthwith elect or appoint a fit person to take the place of such arbitrator.

(6) If the ¹[Provincial Government] is satisfied after such inquiry as it thinks fit that the arbitrator has misconducted himself, it may remove him.

(7) When the arbitrators have made their award under section 78C, they shall sign it and forward it to the Board, and such award shall subject to the provisions of sub-section (8) be final and conclusive and binding on all persons.

(8) If the ¹[Provincial Government] is satisfied after such inquiry as it thinks fit that an award has been improperly procured, or that an arbitrator has misconducted himself in connection with an award, the ¹[Provincial Government] may set aside the award.

**Fees for
arbitrators.**

***78D.** The Board shall pay to each arbitrator a fee to be determined by the ¹[Provincial Government] in respect of the whole of the scheme for which his services are utilized.

¹See foot-note 2 on p. 294, *ante*.

²See foot-note 3 on p. 332, *ante*.

of 1911.)

(Chapter IV.—Acquisition and Disposal of Land.—Secs.
78E-78G.)

178E. Notwithstanding anything contained in any other enactment the proceedings of arbitrators under section 78C shall be governed by rules to be made in this behalf under section 137 :

Proceedings of arbitrators.

Provided that every party to such proceedings shall be entitled to appear before the arbitrators either in person or by his authorized agent.

178F. When the amount of all betterment fees payable in respect of land in the area comprised in the scheme has been determined under section 78B or section 78C, as the case may be, the Board shall, by a notice in writing to be served on all persons liable to such payment, fix a date by which such payment shall be made, and interest at the rate of six *per cent. per annum* upon any amount outstanding shall be payable from that date.

Board to give notice to persons liable to payment of betterment fee.

178G. (1) Any person liable to the payment of a betterment fee may, at his option, instead of making a payment thereof to the Board, execute an agreement with the Board to leave the said payment outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at the rate of six *per cent. per annum*, the first annual payment of such interest to be made one year from the date referred to in section 78F.

Agreement to make payment of betterment fee a charge on land.

(2) Every payment due from any person in respect of a betterment fee and every charge referred to in sub-section (1) shall, notwithstanding anything contained in any other enactment and notwithstanding the existence of any mortgage or other charge whether legal or equitable created either before or after the commencement of the Calcutta Improvement (Amendment) Act, 1931, be the first charge upon the interest of such person in such land.

Ben. Act
VIII of
1931.

(3) The provisions of sub-sections (7), (8) and (9) of section 78 relating, in the case of the payments mentioned in that section, to the non-payment of instalments of interest, the paying off of the charge with interest, and the restrictions in respect of suits against the Board shall apply, *mutatis mutandis*, to the payment of the money payable under an agreement made in pursuance of sub-section (1) and of the interest payable in respect thereof.

¹See foot-note 3 on page 332, *ante*.

(Chapter IV.—Acquisition and Disposal of Land.—Secs. 79-80.)

¹ Recovery of special payments and betterment fees.

Recovery of money payable in pursuance of sections 78, 78B, 78C or 78G.

79. ¹All money payable in respect of any land by any person under an agreement executed in pursuance of sub-section (4) of section 78, or by any person in respect of a betterment fee under section 78B or section 78C, or by any person under an agreement executed in pursuance of section 78G, sub-section (1), shall be recoverable by the Board (together with interest, ²[due, up to the date of realization, which shall, in the case of betterment fees under section 78B or section 78C, be] at the rate of six *per cent. per annum*), from the said person or his successor in interest in such land, in the manner provided by the Calcutta Municipal Act, 1923, for the recovery of the consolidated rate;

Ben. Act
III of
1923.

and, if not so recovered, the Chairman may, after giving public notice of his intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

Board to appoint persons for enforcement of processes for recovery of dues.

79A. The Board may direct by what authority any powers or duties incident under the Calcutta Municipal Act, 1923, to the enforcement of any process for the recovery of the consolidated rate shall be exercised and performed when that process is employed under section 79.

⁴ Acquisition on fresh declaration.

Agreement or payment not to bar acquisition under a fresh declaration.

80. If any land, in respect of which an agreement has been executed or a payment has been accepted in pursuance of sub-section (4) of section 78, or in respect of which the payment of a betterment fee has been accepted in pursuance of sub-section (3) of section 78B or has been made after its determination under section 78C, or in respect of which an agreement for such payment has been executed under section 78G, be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894.

I of 1894.

¹ This sub-heading and this paragraph were substituted for the original first paragraph by s. 8 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

² These words were substituted for the words "up to the date of realization" by s. 3 of the Calcutta Improvement (Amendment) Act, 1934 (Ben. Act II of 1935).

³ Section 79A was inserted by s. 9 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

⁴ This sub-heading and section 80 were substituted for the original section 80 by s. 10, *ibid.*

of 1911.]

(Chapter IV.—Acquisition and Disposal of Land.—Chapter V.—Taxation.—Secs. 81, 82.)

Disposal of Land.

81. (1) The Board may retain, or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by them under this Act. Power to dispose of land.

(2) Whenever the Board decide to lease or sell any land acquired by them under this Act from any person, they—

(a) shall give notice by advertisement in local newspapers, and

(b) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land, at a rate to be fixed by the Board, if the Board consider that such a right can be given without detriment to the carrying out of the purposes of this Act.

(3) If in any case two or more persons claim to exercise a right offered under clause (b) to take on lease or to purchase any land, the right shall be exercisable by the person who agrees to pay the highest sum for the land, not being less than the rate fixed by the Board under that clause, to the exclusion of the others.

CHAPTER V.

TAXATION.

Duty on Transfers of Property.

82. (1) The duty imposed by the Indian Stamp Act, 1899, on instruments of sale, gift and usufructuary mortgage, respectively, of immovable property shall, in the case of instruments affecting immovable property situated in the Calcutta Municipality and executed on or after the commencement of this Act² be increased by two *per centum* on the value of the property so situated, or (in the case of an usufructuary mortgage) on the amount secured by the instrument, as set forth in the instrument. Duty on certain transfers of immovable property.

¹Section 82 was extended to Eastern Bengal by the Bengal Law Act, 1914 (Ben. Act I of 1914), s. 3, Sch. I.

²i.e. The 2nd January, 1912, see notification No. 1148, dated the 30th October, 1911.

[**Ben. Act V**

(Chapter V.—Taxation.—Sec. 83.)

(2) For the purposes of this section, section 27 of the said Indian Stamp Act, 1899, shall be read as if it specifically required the particulars referred to therein to be set forth separately in respect of— **II of 1899.**

(a) property situated in the Calcutta Municipality, and
(b) property situated outside the Calcutta Municipality, respectively.

(3) For the purposes of this section, section 64 of the said Indian Stamp Act, 1899, shall be read as if it referred to the Board as well as the Government.

(4) All collections resulting from the said increase shall, after deducting incidental expenses (if any), be paid to the Board at such time as may be prescribed by rule made under section 86.

Terminal Tax on Passengers.

Terminal tax
on passengers
by railway or
inland
steam-vessel.

83. (1) Every passenger brought to or taken from any station in the Calcutta Municipality or the Howrah Municipality by railway, and

every passenger brought to or taken from any landing place in the Port of Calcutta, within five miles from Government House, by inland steam-vessel,

shall pay a tax of half-an-anna in respect of each journey so made by him :

Provided as follows :—

- (a) the said tax shall not be payable by any passenger brought from, or taken to, any place situated within a radius of thirty miles from Government House ;
- (b) the ¹[Provincial Government] may, by notification, either—
 - (i) ²* * *, reduce the said radius to any distance less than thirty miles, in its application either to passengers generally or to passengers of any specified class, or
 - (ii) ²* * * * * cancel proviso (a), or

¹See foot-note 2 on p. 294, *ante*.

²The words "with the previous sanction of the Government of India" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

of 1911.]

(Chapter V.—Taxation.—Sec. 83).

(iii) reduce the said tax to any lower rate, either in respect of passengers generally or in respect of passengers making frequent journeys ;

(c) the said tax may, in the case of passengers taking suburban season tickets, be calculated at the rate of six annas *per mensem* for each such ticket, or at such lower rate as the ¹[Provincial Government] may prescribe by notification.

(2) The said tax shall be collected by means of a surcharge on fares, by the administration of the railway, or the owner of the vessel, by which the passengers are carried, and shall be paid to the Board at such time as may be prescribed by rule made under section 86, after making such deduction as the ¹[Provincial Government] may approve to meet any expenses incurred in collection with the connection of the tax.

(3) The owner of every inland steam-vessel referred to in sub-section (1) shall prepare and deliver, or cause to be prepared and delivered to the Chairman, each quarter, a return in the form prescribed by rule made under section 86, of all passengers, carried by such vessel, by whom the tax imposed by that sub-section is payable ; and shall subscribe, at the foot of such return, a declaration of the truth thereof.

(4) Every such return shall be delivered to the Chairman or posted to his address within fifteen working days, or at most within thirty days, after the end of the quarter to which it relates.

Explanation.—The expression “working day”, as used in this sub-section, means every day except a public holiday as defined in section 25 of the Negotiable Instruments Act, 1881.

(5) If this Act is directed to come into force during a quarter, the first of the said returns shall be made for the unexpired portion of that quarter.

(6) The expression “administration” and the expressions “owner” and “inland steam-vessel.” as used in this section, have the same meanings as in the Indian Railways Act, 1890, and the Inland Steam-vessels Act, ²[1917], respectively.

³(7) After the commencement of Part III of the Government of India Act, 1935, a tax on passengers by railway shall only be leviable under this section if it was levied immediately before that date, and shall only be leviable until provision to the contrary is made by the Central Legislature.

¹See foot-note 2 on p. 294, *ante*.

²This figure was substituted for the figure “1884” by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³Sub-section (7) was inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

XXVI of
1881.^a

IX of
1890.
I of
1917.

26 Geo.
V, C. 2.

[Ben. Act V

(Chapter V.—Taxation.—Secs. 84-86.)

Customs Duty on Jute.

Customs duty
on exports of
jute from
Calcutta by

84. (1) A customs duty shall be levied and collected on all jute exported by sea from the Port of Calcutta to any other port, whether beyond or within India, at such rate, not exceeding,—

- (a) in the case of raw jute (including jute cuttings and rejections), two annas per bale of four hundred pounds, and
- (b) in the case of manufactured jute, twelve annas per ton of two thousand two hundred and forty pounds,

as the ¹[Provincial Government] may prescribe by notification :

Provided that the said duty shall not be levied or collected in respect of jute, whether raw or manufactured, exported under any contract which was made before the fifteenth day of August, 1911, and the existence of which was established to the satisfaction of the Customs Collector before the fifteenth day of September, 1911.

(2) At the close of each quarter, or as soon thereafter as may be convenient, the duty collected under sub-section (1) shall, after deducting the expenses of collection (if any), be paid by the Customs Collector to the Board.

²(3) After the commencement of Part III of the Government of India Act, 1935, a duty shall only be leviable under this section if it was levied immediately before that date, and shall only be leviable until provision to the contrary is made by the Central Legislature.

26 Geo.
V, C. 2.

Section 5 of
the Indian
Tariff Act,
1934, not to
apply to jute.

85. Section 5 of the Indian Tariff Act, ³[1934], shall not apply to jute (whether raw or manufactured) passing by land out of Calcutta.

XXXII of
1934.

Supplemental Provisions.

Power to
Provincial
Government
to make
rules.

86. (1) The ¹[Provincial Government] may make rules for carrying out the purposes of this chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[Provincial Government] may make rules—

- (a) for regulating the collection of taxes imposed by this chapter, and the payment thereof to the Board;

¹See foot-note 2 on p. 294, *ante*.

²Sub-section (3) was inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³This figure was substituted for the figure "1894" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁴Section 86, in so far as it affects section 82, has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), s. 3, Sch. I.

of 1911.]

(Chapter V.—Taxation.—Chapter VI.—Finance.—Secs. 87, 88.)

- (b) for prescribing the form of the return required by section 83, sub-section (3), and the particulars to be contained therein, and the manner in which the same is to be verified.

87. The offences mentioned in column 1 of the following table shall be punishable to the extent mentioned in column 2 thereof with reference to such offences, respectively :—

Punishment
for offences.

1	2
(1) Omitting to make any return required by section 83, sub-section (3), or refusing to sign or complete the same.	Fine not exceeding one thousand rupees.
(2) Making and delivering any such return containing any statement not true to the best of the information and belief of the person making the same.	The penalty provided in the Indian Penal Code, section 199 for making a false statement in a declaration.
(3) Otherwise contravening any rule made under section 86.	Fine not exceeding five hundred rupees.

Act XLV
of 1860.

CHAPTER VI.

FINANCE.

Municipal Contributions.

88. (1) The ¹[Executive Officer of the Corporation] shall pay from the Municipal Funds to the Board on the first-day of each quater, so long as the Board continue to exist, a sum equivalent to one-half *per cent.* per quarter on the annual rateable valuation determined under ²[Chapter X of the Calcutta Municipal Act, 1923] as it stood on the first day of the last preceding quarter :

Contributions
from Municipal
Funds.

Ben. Act
III of
1923.

Provided as follows :—

- (a) in the case of property vested in the Commissioners for the Port of Calcutta, the said percentage shall be calculated upon nine-tenths of the annual rateable valuation of such property, and

¹See foot-note 1 on p. 296, *ante*.

²These words and figures were substituted for the words and figures "Chapter XII of the Calcutta Municipal Act, 1899" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

(Chapter VI.—Finance.—Secs. 89, 90.)

(b) if this Act is directed to come into force during a quarter, the amount of the first of such payments shall bear such proportion to the sum payable hereunder as the unexpired portion of that quarter bears to the whole quarter.

(2) If in any financial year the sums due to the Board under section 82 and sub-section (1) of this section aggregate less than seven and-a-half lakhs of rupees, the ¹[Executive Officer of the Corporation] shall pay to the Board, from the Municipal Funds, such further sum as may be required to make up the said sum of seven and-a-half lakhs of rupees.

(3) The payments prescribed by sub-sections (1) and (2) shall be made in priority to all other payments due from the Corporation, except those referred to in ²[section 110 of the Calcutta Municipal Act, 1923].

Ben. Act
III of
1923.

(4) If any payment prescribed by sub-section (1) or sub-section (2) cannot be made without increasing the maximum authorised by ³[section 124 of the Calcutta Municipal Act, 1923], then that maximum may be increased to such extent as may be necessary to secure the due making of such payment.

Loans.

Power of
Board to
borrow
money.

89. The Board may from time to time borrow, at such rate of interest, and for such period, and upon such terms, as to the time and method of repayment and otherwise, as the ⁴[Provincial Government] may approve, any sum necessary for the purpose of—

- (a) meeting expenditure debitable to the capital account under section 123, or
- (b) repaying any loan previously taken under this Act :

90. [*Manner and time of borrowing money.*] Rep. by the Devolution Act, 1920 (XXXVIII of 1920).

¹See foot-note 1 on p. 296, *ante*.

²These words and figures were substituted for the words and figures "section 140 of the the said Calcutta Municipal Act, 1899" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³These words and figures were substituted for the words and figures "Clause (a) of section 147 of the said Calcutta Municipal Act, 1899," *ibid*.

⁴See foot-note 2 on p. 294, *ante*.

⁵The proviso was omitted by the Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1911.]

(Chapter VI.—Finance.—Secs. 91-95.)

91. Whenever the borrowing of any sum has been approved under section 89, the Board may, instead of borrowing such sum or any part thereof from the public, *** take credit from any Bank, on a cash account to be kept in the name of the Board, to the extent of such sum or part;

Loans from Banks.

and, with the previous sanction of the ²[Provincial Government] may grant mortgages of all or any property vested in the Board by way of securing the payment of the amount of such credit or of the sums from time to time advanced on such cash account with interest.

92. When any sum of money has been borrowed under section 89 or section 91 for the purpose of meeting particular expenditure or repaying a particular loan, no portion thereof shall be applied to any other purpose without the previous sanction of the ²[Provincial Government].

Diversion of borrowed money to purposes other than those first approved.

93. (1) Whenever money is borrowed by the Board on debentures, the debentures shall be in such form as the Board, with the previous sanction of the ²[Provincial Government], may from time to time determine.

Form, signature, exchange, transfer and effect of debentures.

(2) All debentures shall be signed by the Chairman and one other Trustee.

(3) The holder of any debenture in any form prescribed under sub-section (1) may obtain in exchange therefor, upon such terms as the Board may from time to time determine, a debenture in any other form so prescribed.

(4) Every debenture issued by the Board shall be transferable by endorsement, unless some other mode of transfer be prescribed therein.

(5) The right to sue in respect of moneys secured by debentures issued by the Board shall vest in the respective holders of the debentures for the time being, without any preference by reason of some of such debentures being prior in date to others.

94. All coupons attached to debentures issued under this Act shall bear the signature of the Chairman; and such signature may be engraved, lithographed or impressed by any mechanical process.

Signature of coupons attached to debentures.

95. When any debenture or security issued under this Act is payable to two or more persons jointly, and either or

Payments to survivors of joint payees.

¹The words and figure "but subject to any direction given by the Provincial Government under section 90" were repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act 1 of 1939).

²See foot-note 2 on p. 294, *ante*.

(Chapter VI.—Finance.—Secs. 96-99.)

any of them dies, then, notwithstanding anything in section 45 of the Indian Contract Act, 1872, the debenture or security shall be payable to the survivor or survivors of such persons :

IX of 1872.

Provided that nothing in this section shall affect any claim by the representative of a deceased person against such survivor or survivors.

Receipt by
joint holder
for interest
or dividend.

96. Where two or more persons are joint holders of any debenture or security issued under this Act, any one of such persons may give an effectual receipt for any interest or dividend payable in respect of such debenture or security, unless notice to the contrary has been given to the Board by any other of such persons.

Priority of
payments for
interest and
repayment of
loans.

97. All payments due from the Board for interest on, or the repayment of, loans, shall be made in priority to all other payments due from the Board.

Repayment
of loans
taken under
section 89.

98. Every loan taken by the Board under section 89 shall be repaid within the period approved by the ¹[Provincial Government] under that section, and, subject, to the provisions of section 125, sub-section (2), by such of the following methods as may be so approved, namely :—

- (a) from a sinking fund established under section 99 in respect of the loan, or
- (b) by paying equal yearly or half-yearly instalments of principal, or of principal and interest, throughout the said period, or
- (c) if the Board have, before borrowing money on debentures, reserved, by public notice a power to pay off the loan by periodical instalments and to select by lot the particular debentures to be discharged at particular periods—then by paying such instalments at such periods, or
- (d) from money borrowed for the purpose under section 89, clause (b), or
- (e) partly from the sinking fund established under section 99 in respect of the loan, and partly from money borrowed for the purpose under section 89, clause (b).

Establishment
and
maintenance
of sinking
funds.

99. (1) Whenever the ¹[Provincial Government] have approved the repayment of a loan from a sinking fund the Board shall establish such a fund and shall pay into it in every year, until the loan is repaid, a sum so

¹See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter VI.—Finance.—Secs. 100-102.)

calculated that, if regularly paid throughout the period approved by the ¹[Provincial Government] under section 89, it would, with accumulations in the way of compound interest, be sufficient, after payment of all expenses, to pay off the loan at the end of that period.

(2) The rate of interest on the basis of which the sum referred to in sub-section (1) shall be calculated shall be such as may be prescribed by the ¹[Provincial Government].

100. Notwithstanding anything contained in section 99, if at any time the sum standing at credit of the sinking fund established for the repayment of any loan, is of such amount that, if allowed to accumulate at the rate of interest prescribed under sub-section (2) of that section, it will be sufficient to repay the loan at the end of the period approved by the ¹[Provincial Government] under section 89, then, with the permission of the ¹[Provincial Government], further annual payments into such funds may be discontinued.

Power to discontinue payments into sinking fund.

101. (1) All money paid into any sinking fund shall as soon as possible be invested, under the orders of the Board, in—

Investment of sinking funds.

- (a) Government securities, or
- (b) securities guaranteed ²[by the Central or any Provincial Government], or
- (c) Calcutta Municipal debentures, or
- (d) debentures issued by the Commissioners for the Port of Calcutta, or
- (e) debentures issued by the Board,

in the joint names of the Secretary to the Government of Bengal in the Financial Department and the Accountant-General of Bengal, to be held by them as trustees for the purpose of repaying from time to time the debentures issued by the Board.

(2) All dividends and other sums received in respect of any such investment shall, as soon as possible after receipt, be paid into the appropriate sinking fund and invested in the manner prescribed by sub-section (1).

(3) Any investment made under this section may from time to time, subject to the provisions of sub-section (1), be varied or transposed.

102. The aforesaid trustees may from time to time apply any sinking fund, or any part thereof, in or towards the discharge of the loan or any part of the loan for which such fund was established; and until

Application of sinking funds.

¹See foot-note 2 on p. 294, *ante*.

²These words were substituted for the words "by the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act V

(Chapter VI.—Finance.—Secs. 103-105.)

such loan is wholly discharged shall not apply the same for any other purpose.

Annual
statements
by trustees.

103. (1) The aforesaid trustees shall, at the end of every financial year, transmit to the Chairman a statement showing—

- (a) the amount which has been invested during the year under section 101,
- (b) the date of the last investment made previous to the transmission of the statement,
- (c) the aggregate amount of the securities held by them,
- (d) the aggregate amount which has, up to the date of the statement, been applied under section 102 in or towards repaying loans, and
- (e) the aggregate amount already paid into each sinking fund.

(2) Every such statement shall be laid before the Board and published by notification.

Annual
examination
of sinking
funds.

104. (1) The said sinking funds shall be subject to annual examination by the Accountant-General, Bengal, who shall ascertain whether the cash and the current value of the securities at credit of such funds are actually equal to the amount which would have accumulated had investments been regularly made and had the rate of interest as originally estimated been obtained therefrom.

(2) The Board shall forthwith pay into any sinking fund any amount which the Accountant-General may certify to be deficient, unless the [Provincial Government] specially sanction a gradual readjustment.

Enforcement of Liabilities.

105. (1) If the Board fail—

- (a) to pay any interest due in respect of any loan taken in pursuance of section 89, or
- (b) to make any payment prescribed by section 98, section 99 or sub-section (2) of section 104, or
- (c) to make any investment prescribed by section 101,

the Accountant-General of Bengal shall make such payment or set aside and invest such sum as ought to

Procedure
if Board
fail to
make any
payment or
investment
in respect
of loans.

¹These words were substituted for the words "Government of India" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1911.]

(Chapter VI.—Finance.—Sec. 106.)

have been invested under the said section 101, as the case may be ;

and the ¹[Executive Officer of the Corporation] shall forthwith pay from the Municipal Funds to the said Accountant-General a sum equivalent to the sum so paid or invested by him ;

and the ²[Provincial Government] may attach the rents and other income of the Board : and thereupon the provisions of ³[sub-section (2) of section 118 of the Calcutta Municipal Act, 1923], shall, with all necessary modifications, be deemed to apply.

Ben. Act
III
of 1923.

(2) Whenever the ¹[Executive Officer of the Corporation] has made any payment to the Accountant-General under sub-section (1), the ²[Provincial Government] shall reimburse the Corporation out of the rents and income attached under that sub-section, and if such rents and income prove insufficient for that purpose the Corporation may, with the previous sanction of the ²[Provincial Government] increase the maximum authorized by ³[section 124 of the Calcutta Municipal Act, 1923], to such extent as may be necessary for the purpose of making up the deficiency :

Provided that no such increase shall be made, unless the taxes imposed by sections 83 and 84 are levied at the maximum rates respectively prescribed by those sections.

106. If the ¹[Executive Officer of the Corporation] fails to make any payment as required by section 88 or section 105, the ²[Provincial Government] may attach the Municipal Funds or any of them ;

Procedure if
Chairman of
Corporation
fails to
make any
payment
due to
Board or
Accountant-
General.

and thereupon the provisions of ³[sub-section (2) of section 118 of the Calcutta Municipal Act, 1923], shall, with all necessary modifications, be deemed to apply, and the ²[Provincial Government] may further require the Corporation to increase the maximum authorized by ⁵[section 124] of that Act, to such extent as may be necessary for the purpose of making such payment :

Provided that no such increase shall be made, in consequence of any failure of the ¹[Executive Officer of the Corporation] to make any payment as required by section 105, unless the taxes imposed by sections 83 and 84 are levied at the maximum rates respectively prescribed by those sections.

¹See foot-note 1 on p. 296, *ante*.

²See foot-note 2 on p. 294, *ante*.

³These words and figures were substituted for the words and figures " sub-section (2) of section 141 of the Calcutta Municipal Act, 1899 " by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)

⁴These words and figures were substituted for the words and figures " clause (a) of section 147 of the Calcutta Municipal Act, 1899," *ibid*.

⁵This word and figure were substituted for the words and figure " clause (a) of section 147 ", *ibid*.

(Chapter VI.—Finance.—Secs. 107-111.)

Payments under section 105 to be a charge on the property of the Board.

107. All moneys paid by the ¹[Executive Officer of the Corporation] under sub-section (1) of section 105 and not reimbursed by the ²[Provincial Government] under sub-section (2) of that section, and all moneys payable under sub-section (1) of section 105 and levied under section 106, shall constitute a charge upon the property of the Board.

Budget Estimates.

Estimates of income and expenditure to be laid annually before the Board.

108. (1) The Chairman shall, at a special meeting to be held in the month of February in each year, lay before the Board an estimate of the income and expenditure of the Board for the next ensuing financial year.

(2) Every such estimate shall make provision for the due fulfilment of all the liabilities of the Board and for the efficient administration of this Act.

(3) Every such estimate shall differentiate capital and revenue funds, and shall be prepared in such form, and shall contain such details, as the ²[Provincial Government] or the Board may from time to time direct.

(4) Every such estimate shall be completed and printed, and a copy thereof sent, by post or otherwise, to each Trustee, at least ten clear days before the date of the meeting at which the estimate is to be laid before the Board.

Sanction of Board to estimates.

109. The Board shall consider every estimate so laid before them, and shall sanction the same, either without alteration or with such alterations as they may think fit.

Approval of Provincial Government to estimates.

110. (1) Every such estimate, as sanctioned by the Board, shall be submitted to the ²[Provincial Government], who may, at any time within two months after receipt of the same,—

(a) approve the estimate, or

(b) disallow the estimate or any portion thereof, and return the estimate to the Board for amendment.

(2) If any estimate is so returned to the Board, they shall forthwith proceed to amend it, and shall re-submit the estimate, as amended, to the ²[Provincial Government], who may then approve it.

Transmission of copy of estimate to Executive Officer of Corporation.

111. A copy of every such estimate shall, when approved by the ²[Provincial Government], be sent by the Board to the ¹[Executive Officer of the Corporation].

¹See foot-note 1 on p. 296, *ante*.

²See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter VI.—Finance.—Secs. 112-114.)

112. (1) A special meeting of the Board shall be held as soon as may be expedient after the day appointed under section 17, sub-section (1), and the Chairman shall at such special meeting lay before the Board an estimate of the income and expenditure of the Board for the portion of the financial year which on the said day had not expired.

Special provisions as to the first estimate after the constitution of the Board.

(2) The provisions of section 108, sub-sections (2) to (4), and sections 109 to 111 shall apply to the said estimate.

113. (1) The Board may, at any time during the year for which any estimate has been sanctioned, cause a supplementary estimate to be prepared and laid before them at a special meeting.

Supplementary estimates.

(2) The provisions of section 108, sub-sections (3) and (4), and sections 109 to 111 shall apply to every supplementary estimate.

114. (1) No sum shall be expended by or on behalf of the Board unless the expenditure of the same is covered by a current budget-grant or can be met by re-appropriation or by drawing on the closing balance.

Adherence to estimate, and maintenance of closing balance.

(2) The closing balance shall not be reduced below one lakh of rupees without the previous sanction of the ¹[Provincial Government].

(3) The following items shall be excepted from the provisions of sub-sections (1) and (2), namely,—

- (a) re-payments of moneys belonging to contractors or other persons and held in deposit, and of moneys collected by, or credited to, the Board by mistake ;
- (b) payments due under a decree or order of a Court passed against the Board or against the Chairman *ex-officio*, or under an award of the Tribunal ;
- (c) sums payable under a compromise of any suit or other legal proceeding or claim effected under section 154 ;
- (d) sums payable under this Act by way of compensation ; and
- (e) payments required to meet some pressing emergency.

(4) Whenever any sum exceeding five thousand rupees is expended under clause (e) of sub-section (3), the Chairman shall forthwith report the circumstances to the ¹[Provincial Government], and shall at the same time explain how the Board propose to cover the expenditure.

¹See foot-note 2 on p. 294, *ante*.

(Chapter VI.—Finance.—Secs. 115-119.)

Banking and Investments.

Receipt of
moneys, and
deposit in
Imperial Bank
of India.

115. All moneys payable to the Board shall be received by the Chairman, and shall forthwith be paid into the ¹[Imperial Bank of India] to the credit of an account which shall be styled "The Account of the Trustees for the Improvement of Calcutta."

Investment
of surplus
money.

116. (1) Surplus moneys at the credit of the said account may from time to time be—

- (a) deposited at interest in the ¹[Imperial Bank of India] or in any other Bank in Calcutta approved by the ²[Provincial Government] in this behalf, or
- (b) invested in any of the securities or debentures mentioned in section 101, sub-section (1), of this Act or in section 20 of the Indian Trusts Act, 1882. 11 of 1882.

(2) All such deposits and investments shall be made by the Chairman on behalf of, and with the sanction of, the Board; and, with the like sanction, the Chairman may at any time withdraw any deposit so made, or dispose of any securities, and re-deposit or re-invest the money so withdrawn or the proceeds of the disposal of such securities.

Payments
by cheque.

117. (1) No payment shall be made by the ¹[Imperial Bank of India] out of the account referred to in section 115, except upon a cheque.

(2) Payment of any sum due by the Board exceeding one hundred rupees in amount shall be made by means of a cheque, and not in any other way.

Signature of
orders under
section 116
and cheques.

118. All orders for making any deposit, investment, withdrawal or disposal under section 116, and all cheques referred to in section 117, must be signed—

- (a) by the Chairman and the Secretary to the Board, or
- (b) in the event of the illness or occasional absence from Calcutta of the Chairman or the Secretary, then by the Secretary or the Chairman, as the case may be, and by a Trustee other than the Chairman.

Duty of
Chairman
and others
before signing
cheque.

119. Before the Chairman or any other Trustee or the Secretary to the Board signs a cheque under section 118, he must satisfy himself that the sum for which such cheque

¹These words were substituted for the words "Bank of Bengal" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter VI.—Finance.—Secs. 120-122.)

is drawn either is required for a purpose or work specifically sanctioned by the Board or is an item of one of the excepted descriptions specified in section 114, sub-section (3).

Accounts.

120. (1) The expression “cost of management,” as used in following sections in this chapter, means—

Definition of “cost of management”.

- (a) the salary and house-rent and conveyance allowance (if any) of the Chairman or acting Chariman, and the allowances and contributions referred to in section 11, sub-section (2);
- (b) all fees paid under section 22, for attendance at meetings;
- (c) the salaries, fees and allowances of, and the contributions paid under section 146 in respect of, officers and servants of the Board who are included in statements prepared under section 30;
- (d) the remuneration of other employees of the Board, except employees who are paid by the day or whose pay is charged to temporary work;
- (e) all payments made under section 75 and section 146 on account of the Tribunal; and
- (f) all office expenses incurred by the Board or the Tribunal.

(2) The expression “office expenses”, in clause (f), means expenses incurred for carrying on office work, and includes the rent of offices, the provision of furniture therefor, and charges for printing and stationery.

121. (1) The Board shall keep a capital account and a revenue account.

Keeping of capital account and revenue account.

(2) The capital account shall show separately all expenditure incurred by the Board on each improvement scheme and each re-housing scheme.

122. There shall be credited to the capital account—

Credits to capital account.

- ¹(a) all sums (except interest) received by way of special payments or betterment fees in pursuance of sections 78, 78A or 79;
- (b) all moneys received on account of loans taken by the Board in pursuance of section 89 or section 91;

¹Clause (a) was substituted for the original clause by s. 11 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

[Ben. Act V

(Chapter VI.—Finance.—Sec. 123.)

- (c) the proceeds of the sale of any land vested in the Board which was purchased out of any loan taken in pursuance of section 89 or section 91 ;
- (d) where land was purchased out of an advance from the revenue account, the portion of the proceeds of the sale of such land which remains after crediting to the revenue account the amount of such advance ;
- (e) the proceeds of the sale of any movable property (including securities for money invested from the capital account) belonging to the Board ;
- (f) all lump sums received from ¹[any Government] in aid of the capital account ;
- (g) all *premia* received by the Board in connection with leases for any term exceeding forty years ;
- (h) all sums (if any) which the ²[Provincial Government] directs, under section 125, sub-section (2), to be credited to the capital account ; and
- (i) all moneys resulting from the sale of securities by direction of the ²[Provincial Government] under section 126.

Application of
Capital account.

123. The moneys credited to the capital account shall be held by the Board in trust, and shall be applied to —

- (a) meeting all costs of framing and executing improvement schemes and re-housing schemes ;
- (b) meeting the cost of acquiring land for carrying out any of the purposes of this Act ;
- (c) meeting the cost of constructing buildings required for carrying out any of the purposes of this Act ;
- (d) the repayment of loans from money borrowed in pursuance of section 89, clause (b) ;
- (e) making payments in pursuance of section 149, otherwise than for interest or for expenses of maintenance or working ;
- (f) making, or contributing towards the cost of making, surveys, in pursuance of section 167 ;
- (g) meeting such proportion of the cost of management as the Board may, with the sanction of the ²[Provincial Government], prescribe in this behalf; and
- (h) temporarily making good the deficit (if any) in the revenue account at the end of any financial year.

¹These words were substituted for the words "the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter VI.—Finance.—Secs. 124, 125.)

124. There shall be credited to the revenue account—

Credits to
revenue account.

- (a) all interest received in pursuance of ¹sections 78, 78G or 79];
- (b) all proceeds received by the Board of taxes imposed by Chapter V;
- (c) all sums contributed from Municipal Funds which are received by the Board under section 88;
- (d) all ²*, damages ³* * received by the Board under section ⁴[162];
- (e) all annually recurring sums received from the Government in aid of the funds of the Board;
- (f) all *premia* received by the Board in connection with leases for any term not exceeding forty years;
- (g) all rents of land vested in the Board; and
- (h) all other receipts by the Board which are not required by section 122 to be credited to the capital account.

125. (1) The moneys credited to the revenue account shall be held by the Board in trust, and shall be applied to—

Application of
revenue account.

- (a) meeting all charges for interest and sinking fund due on account of any loan taken in pursuance of section 89, clause (a), or section 91, and all other charges incurred in connection with such loans;
- (b) paying all sums due from the Board in respect of rates and taxes imposed under the Calcutta Municipal Act, ⁵[1923], upon land vested in the Board;
- (c) paying the cost (if any) of maintaining a separate establishment for the collection of the rents and other proceeds of land vested in the Board;
- ⁶(cc) paying the fees prescribed for arbitrators under section 78D;
- (d) paying all sums which the ⁷[Provincial Government] may direct to be paid to any auditor under section 132;

Ben. Act
II of
1923.

¹These words and figures were substituted for the words and figures "section 78 or section 79" by s. 12 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

²The word "fines" was omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "and proceeds of confiscations" were omitted, *ibid.*

⁴This figure was substituted for the figure "175", *ibid.*

⁵This figure was substituted for the figure "1899" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁶Clause (cc) was inserted by s. 13 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

⁷See foot-note 2 on p. 294, *ante*.

(Chapter VI.—Finance.—Secs. 126-130.)

- (e) making payments in pursuance of section 149, for interest or for expenses of maintenance or working ;
- (f) paying the cost of management, excluding such proportion thereof as may be debited to the capital account under clause (g) of section 123 ; and
- (g) paying all other sums due from the Board, other than those which are required by section 123 to be disbursed from the capital account.

(2) The surplus (if any) remaining after making the payments referred to in sub-section (1) shall,

subject to the maintenance of a closing balance of one *lakh* of rupees, and

except as provided in section 127, and

unless the ¹[Provincial Government] otherwise directs,

be invested, in the manner prescribed in section 101, towards the service of any loans outstanding after the expiry of sixty years from the commencement of this Act.

Power to direct sale of securities in which any surplus of the revenue account is invested.

126. If, at any time after any surplus referred to in section 125, sub-section (2), has been invested, the ¹[Provincial Government] is satisfied that the investment is not needed for the service of any loan referred to in that sub-section, it may direct the sale of the securities held under the investment.

Advances from revenue account to capital account.

127. (1) Notwithstanding anything contained in section 125, the Board may advance any sum standing at the credit of the revenue account for the purpose of meeting capital expenditure.

(2) Every such advance shall be refunded to the revenue account as soon as may be practicable.

Advances from capital account to revenue account.

128. (1) Any deficit in the revenue account at the end of any financial year may be made good by an advance from the capital account.

(2) Every such advance shall be refunded to the capital account in the following financial year.

Submission of abstracts of accounts to Provincial Government.
Annual audit of accounts.

129. The Board shall submit to the ¹[Provincial Government], at the end of each half of every financial year, an abstract of the accounts of their receipts and expenditure.

130. The accounts of the Board shall, once in every financial year, be examined and audited by such auditor as the ¹[Provincial Government] may appoint in this behalf.

¹See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter VI.—Finance.—Secs. 131-136.)

131. The auditor so appointed may,—

Powers of auditor.

- (a) by written summons, require the production before him of any document which he may consider necessary for the proper conduct of the audit ;
- (b) by written summons require any person having the custody or control of, or being accountable for, any such document to appear in person before him ; and
- (c) require any person so appearing before him to make and sign a declaration with respect to any such document, to answer any question, or to prepare and submit any statement.

132. The Board shall pay to the said auditor such remuneration as the ¹[Provincial Government] may direct.

Remuneration of auditor.

133. The said auditor shall —

Reports and information to be furnished by auditor to the Board.

- (a) report to the Board any material impropriety or irregularity which he may observe in the expenditure, or in the recovery of moneys due to the Board, or in the accounts, and report the same to the ¹[Provincial Government],
- (b) furnish to the Board such information as they may from time to time require concerning the progress of his audit, and
- (c) within fourteen days after the completion of his audit, forward his report upon the accounts to the Chairman.

134. It shall be the duty of the Board forthwith to remedy any defects or irregularities that may be pointed out by the auditor.

Board to remedy defects pointed out by auditor.

135. The Chairman shall cause the report mentioned in section 133, clause (c), to be printed and shall forward a printed copy thereof to each Trustee, and shall bring such report before the Board for consideration at their next meeting.

Auditor's report to be sent to each Trustee and considered by Board.

136. As soon as practicable after the receipt of the said report, the Board shall prepare an abstract of the accounts to which it relates, and shall publish such abstract by notification, and shall send a copy of the abstract to the ²[Executive Officer of the Corporation] and to the ¹[Provincial Government].

Publication and transmission of an abstract of the accounts.

¹See foot-note 2 on p. 294, *ante*.

²See foot-note 1 on p. 296, *ante*.

(Chapter VII.—Rules.—Secs. 137, 138.)

CHAPTER VII.

RULES.

Further powers to Provincial Government for making rules.

137. In addition to the power conferred by section 86, the ¹[Provincial Government] may make rules—

- (1) for regulating elections under sub-sections (1), (2) and (3) of section 7 ;
- (2) for prescribing the maximum sum which may be paid to any person by way of fees under section 22 ;
- (3) for fixing the charge to be made for a copy of, or extracts from, the municipal assessment-book furnished to the Chairman under section 46 ; and
- ²(3a) for determining the qualifications and disqualifications of, the conditions and mode of election, selection or appointment of, an arbitrator and for regulating the proceedings of arbitrators under section 78C ;
- (4) for prescribing the form of the abstracts of accounts referred to in sections 129 and 136.

Further powers to Board for making rules.

138. (1) In addition to the power conferred by section 31, the Board may from time to time make rules (not inconsistent with any rules made by the ¹[Provincial Government] or the President of the Tribunal under this Act) for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Board may make rules—

- (a) for associating members with the Board under section 19 ;
- (b) for appointing persons (other than Trustees and persons associated with the Board under section 19) to be members of Committees under section 20 ;
- (c) for regulating the delegation of powers or duties of the Board to Committees under section 20 ;
- (d) for the guidance of persons employed by them under this Act ;
- (e) for prescribing the fees payable for copies of documents delivered under section 43, sub-section (3), ³[or clause (iv) of sub-section (2) of section 63] ;

¹See foot-note 2 on p. 294, *ante*

²Clause (3a) was inserted by s. 14 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).

³These words and figures were added by s. 4 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

of 1911.]

(Chapter VII.—Rules.—Secs. 139-141.)

- (f) for facilitating the taking of a census and securing accurate returns thereof ;
- (g) for the maintenance and management of dwellings and shops constructed under re-housing schemes.

(3) In making any rule under sub-section (1) or sub-section (2), the Board may provide that a breach of it shall be punishable—

- (i) with fine which may extend to five hundred rupees, or
- (ii) in case of a continuing breach, with fine which may extend to fifty rupees for every day during which the breach continues after receipt of written notice from the Chairman to discontinue the breach.

139. The power to make rules under section 86, section 137 or section 138 is subject to the condition of the rules being made after previous publication, and to the following further conditions, namely,—

Conditions precedent to the making of rules under sections 86, 137 or 138.

- (a) a draft of the rules shall be published by notification and in local newspapers ;
- (b) such draft shall not be further proceeded with until after the expiration of a period of one month from such publication, or such longer period as the ¹[Provincial Government] or (in the case of rules made under section 138) the Board may appoint ;
- (c) for one month at least during such period, a printed copy of such draft shall be kept at the Board's office for public inspection, and every person shall be permitted at any reasonable time to peruse the same, free of charge ;
- (d) printed copies of such draft shall be delivered to any person requiring the same, on payment of a fee of two annas for each copy.

140. No rule made under section 138 shall have any validity unless and until it is sanctioned, with or without modification, by the ¹[Provincial Government].

Sanction of Provincial Government required to rules made under section 138.

141. When any rule has been made under section 86 or section 137, and when any rule has been made under section

Publication of rules.

¹See foot-note 2 on p. 294, ante.

[*Ben. Act V*]

(Chapter VII.—Rules.—Chapter VIII.—Supplemental Provisions.—Secs. 142-146.)

138 and duly sanctioned, it shall be published by the ¹[Provincial Government] by notification, and such publication shall be conclusive proof that the rule has been duly made.

Printing and
sale of copies
of rules.

142. (1) The Chairman shall cause all rules made under section 86, section 137 or section 138 and for the time being in force to be printed, and shall cause printed copies thereof to be delivered to any applicant on payment of a fee of two annas for each copy.

(2) Notice of the fact of copies of rules being obtainable at the said price, and of the place where and the person from whom the same are obtainable, shall be given by the Chairman by advertisement in local newspapers.

Exhibition of
copies of
rules.

143. Copies, in English and Bengali, of all rules made under section 137 or section 138 shall be hung or affixed in some conspicuous part of the Board's office and in such places of public resort affected by the rules as the Chairman may think fit.

Power of
Provincial
Government
to cancel rules
made under
section 138.

144. The ¹[Provincial Government] may at any time, by notification, cancel any rule made by the Board under section 138.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

Status of Trustees, etc.

Trustees, etc.,
deemed public
servants.

145. Every Trustee, and every officer and servant of the Board, and every member and officer and servant of the Tribunal, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act
XLV of
1860.

Contributions towards leave-allowances and pensions of Government servants.

Contributions
by Board
towards leave-
allowances
and pensions
of servants of
the Crown
employed
under this
Act.

146. The Board shall be liable to pay such contributions for the leave-allowances and pensions of any ²[servant of the Crown] employed as Chairman or as an officer or servant of the Board, or as a member or officer or servant of the Tribunal, as may be ³[required, by the conditions of his service under the Crown, to be paid by him or on his behalf.]

¹See foot-note 2 on p. 294, *ante*.

²These words were substituted for the words "Government servant" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937

³These words were substituted for the original words, *ibid*.

of 1911.]

(Chapter VIII.—Supplemental Provisions.—Secs. 147, 148.)

Extension of Acts to areas in the neighbourhood of the Calcutta Municipality.

147. (1) When any provision of this Act has been extended to any area under section 1, sub-section (3), the ¹[Provincial Government] may, by notification published in the ²[Official Gazette] and in such other manner (if any) as it may consider necessary, extend to such area the Calcutta Municipal Act, ³[1923], or any portion thereof, subject to such restrictions and modifications (if any) as may be specified in such notification.

Power to extend the Calcutta Municipal Act, 1923, to areas, near Calcutta, to which provisions of the present Act have been extended.

Ben. Act
III of
1923.

(2) When the said Calcutta Municipal Act, ³[1923], or any portion thereof, is extended under sub-section (1) to any area, then—

(a) the Bengal Municipal Act, ⁴[1932], or the Bengal Local Self-Government Act of 1885, as the case may be, or the corresponding portion of such Act, as the case may be, if in force in such area, shall be deemed to be repealed therein, and,

Ben. Act,
XV of 1932
Ben. Act
III of
1885.

(b) except as the ¹[Provincial Government] may otherwise, by notification, direct, all rules, by-laws, regulations, orders, directions and powers made, issued or conferred under the portions of the said Calcutta Municipal Act, ³[1923], which have been so extended and in force at the date of such extension, shall apply to the said area, in super-session of all corresponding rules, by-laws, regulations, orders, directions and powers (if any) made, issued or conferred under the said Bengal Municipal Act, ⁴[1932], or the said Bengal Local Self-Government Act of 1885, as the case may be.

148. (1) Before finally publishing any notification under section 1, sub-section (3), or section 147, sub-section (1) the ¹[Provincial Government] shall publish a draft of the same in the ²[Official Gazette].

Publication of notifications under sections 1 (3) and 147(1) in draft, for criticism.

(2) Any ratepayer or inhabitant of the area affected by such draft may, if he objects to the draft, submit his objection in writing to the ¹[Provincial Government] within six weeks from its publication, and the ¹[Provincial Government] shall take such objection into consideration.

¹See foot-note 2 on p. 294, *ante*.

²See foot-note 5 on p. 295, *ante*.

³See foot-note 5 on p. 353, *ante*.

⁴This figure was substituted for the figure "1884" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

*(Chapter VIII.—Supplemental Provisions.—Secs. 149-151.)**Facilities for movement of the population.*

Powers of the Board for facilitating movement of the population.

149. With a view to facilitating the movement of the population in and around the Calcutta Municipality, the Board may from time to time,—

(1) subject to any conditions they may think fit to impose,—

(a) guarantee the payment, from the funds at their disposal, of such sums as they may think fit, by way of interest on capital expended on the construction, maintenance or working of means of locomotion; or

(b) make such payments as they may think fit from the said funds, by way of subsidy to persons undertaking to provide, maintain and work means of locomotion; or

(2) either singly or in combination, with any other person, construct, maintain and work any means of locomotion, under the provisions of any law applicable thereto, or

(3) construct, or widen, strengthen or otherwise improve, bridges :

Provided that no guarantee or subsidy shall be made under clause (1), and no means of locomotion shall be constructed, maintained or worked under clause (2), without the sanction of the ¹[Provincial Government.]

Telegraph and Railways Acts.

Saving of Telegraph and Railways Acts.

150. Nothing in this Act shall be deemed to affect the provisions of the Indian Telegraph Act, 1885, or the Indian Railways Act, 1890.

XIII of
1885,
IX of
1890,

Legal Proceedings.

Cognizance of offences.

151. Notwithstanding anything contained in the Code of Criminal Procedure, 1898,

all offences against this Act or any rule made hereunder shall, wherever committed, be cognizable by a Presidency Magistrate ;

Act V of
1898.

¹See foot-note 2 on p. 294, *ante*.

of 1911.]

(Chapter VIII.—Supplemental Provisions.—Secs. 152-155.)

and no such Magistrate shall be deemed to be incapable of taking cognizance of any such offence by reason only of being liable to pay any tax imposed by this Act or of his being benefited by the funds to the credit of which any fine imposed by him will be payable.

152. No person shall be liable to punishment for any offence against this Act or any rule made hereunder unless complaint of such offence is made before a Presidency Magistrate within three months next after the commission of such offence.

Limitation of time for prosecution.

153. If any person, who has been summoned to appear before a Presidency Magistrate to answer a charge of an offence against this Act or any rule made hereunder which is punishable with fine only, fails to appear at the time and place mentioned in the summons, the Magistrate may, if service of the summons is proved to his satisfaction, and if no sufficient cause is shown for the non-appearance of such person, hear and determine the case in his absence.

Power to hear case in absence of accused when summoned to appear.

154. The Chairman may, subject to the control of the Board,—

- (a) institute, defend or withdraw from, legal proceedings under this Act or any rule made hereunder ;
- (b) compound any offence against this Act or any rule made hereunder which, under any law for the time being in force, may lawfully be compounded ;
- (c) admit, compromise or withdraw any claim made under this Act or any rule made hereunder ; and
- (d) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the Board to obtain, for any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Board or any officer or servant of the Board.

Powers of Chairman as to institution, etc., of legal proceedings and obtaining legal advice.

155. No suit shall be maintainable against the Board, or any Trustee, or any officer or servant of the Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of anything lawfully and in good faith and with due care and attention done under this Act or any rule made hereunder.

Indemnity to Board, etc.

(Chapter VIII.—Supplemental Provisions.—Secs. 156-158.)

**Notice of
suit against
Board, etc.**

156. No suit shall be instituted against the Board, or any Trustee, or any officer or servant of the Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of any act purporting to be done under this Act or any rule made hereunder,

until the expiration of one month next after written notice has been delivered or left at the Board's office or the place of abode of such officer, servant or person, stating the cause of action, the name and place of abode of the intending plaintiff, and the relief which he claims;

and the plaint must contain a statement that such notice has been so delivered or left.

Police.

**Co-operation
of the Police.**

157. (1) The Commissioner of Police and his subordinates shall be bound to co-operate with the Chairman for carrying into effect and enforcing the provisions of this Act.

(2) It shall be the duty of every police-officer who is subordinate to the Commissioner of Police—

(i) to communicate without delay to the proper officer or servant of the Board any information which he receives of a design to commit or of the commission of any offence against this Act or any rule made hereunder, and

(ii) to assist the Chairman or any officer or servant of the Board reasonably demanding his aid for the lawful exercise of any power vesting in the Chairman or in such officer or servant under this Act or any such rule.

**Arrest of
offenders.**

158. (1) Every police-officer shall arrest any person who commits, in his view, any offence against this Act or any rule made hereunder, if the name and address of such person be unknown to him, and if such person, on demand, declines to give his name and address, or gives a name or address which such officer has reason to believe to be false.

(2) No person so arrested shall be detained in custody after his true name and address are ascertained, or without, the order of a Magistrate, for any longer time, not exceeding at the most twenty-four hours from the arrest, than is necessary for bringing him before a Magistrate.

of 1911.]

(Chapter VIII.—Supplemental Provisions.—Secs. 159, 160.)

(3) On the written application of the Chairman, any police-officer above the rank of constable shall arrest any person who obstructs any officer or servant of the Board in the exercise of any of the powers conferred by this Act or any rule made hereunder.

Evidence.

159. Whenever, under this Act or any rule made hereunder, the doing or the omitting to do anything or the validity of anything depends upon the approval, sanction, consent, concurrence, declaration, opinion or satisfaction of—

Proof of consent etc., of Board or Chairman or officer or servant of Board.

- (a) the Board or the Chairman, or
- (b) any officer or servant of the Board,

a written document, signed, in case (a) by the Chairman, and in case (b) by the said officer or servant, purporting to convey or set forth such approval, sanction, consent, concurrence, declaration, opinion or satisfaction, shall be sufficient evidence of such approval, sanction, consent, concurrence, declaration, opinion or satisfaction.

Validation.

160. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—

Validation of acts and proceedings.

- (a) the existence of any vacancy in, or any defect in the constitution of, the Board or any Committee; or
- (b) any person having ceased to be a Trustee; or
- (c) any Trustee, or any person associated with the Board under section 19, or any other member of a Committee appointed under this Act, having voted or taken any other part in any proceeding in contravention of section 23; or
- (d) the failure to serve a notice under section 45 on any person, where no substantial injustice has resulted from such failure; or
- (e) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Board, the minutes of the proceedings of which have been duly signed as prescribed in section 18, clause (h), shall be taken to have been duly convened and to be free from all defect and irregularity.

[Ben. Act V]

*(Chapter VIII.—Supplemental Provisions.—Secs. 161-164.)**Compensation.*

General power
of Board to pay
compensation.

161. In any case not otherwise expressly provided for in this Act, the Board may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested, by this Act or any rule made or scheme sanctioned hereunder, in the Board or the Chairman or any officer or servant of the Board.

Compensation
to be paid by
offenders for
damage caused
by them.

162. (1) If, on account of any act or omission, any person has been convicted of an offence against this Act or any rule made hereunder, and, by reason of the same act or omission of the said person, damage has occurred to any property of the Board, compensation shall be paid by the said person for the said damage, notwithstanding any punishment to which he may have been sentenced for the said offence.

(2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the Magistrate before whom he was convicted of the said offence.

(3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said Magistrate, as if it were a fine inflicted by him on the person liable therefor.

Public Notices and Advertisements.

Public notices
how to be
made known.

163. Every public notice given under this Act or any rule made hereunder shall be in writing over the signature of the Chairman,

and shall be widely made known in the locality to be affected thereby, by affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in local newspapers, or by any two or more of these means, and by any other means that the Chairman may think fit.

Newspapers in
which advertise-
ments or notices
to be published.

164. Whenever it is provided by this Act or any rule made hereunder that notice shall be given by advertisement, in local newspapers, or that notification or any information shall be published in local newspapers, such notice, notification or information shall be inserted, if practicable, in at least two English newspapers and two vernacular newspapers.

of 1911.]

(Chapter VIII.—Supplemental Provisions.—
Secs. 165-168.)

Signature and Service of notices or bills.

165. Every notice or bill, which is required by this Act or by any rule made hereunder to bear the signature of the Chairman or of any other Trustee or of any officer or servant of the Board, shall be deemed to be properly signed if it bears a *facsimile* of the signature of the Chairman or of such other Trustee or of such officer or servant, as the case may be, stamped thereupon.

Stamping signature on notices or bills.

166. When any notice, bill or other document is required by this Act or any rule made hereunder to be served upon or issued or presented to any person, such service, issue or presentation shall be effected—

Service how to be effected.

- (a) by giving or tendering such document to such person; or
- (b) if such person is not found, by leaving such document at his last known place of abode in Calcutta, or by giving or tendering the same to some adult male member or servant of his family; or
- (c) if such person does not reside in Calcutta, and his address elsewhere is known to the Chairman, by forwarding such document to him by registered post under cover bearing the said address; or
- (d) if none of the means aforesaid be available, by causing a copy of such document to be affixed on some conspicuous part of the land (if any) to which the document relates.

Surveys.

167. The Board may—

- (a) cause a survey of any land to be made, whenever they consider that a survey is necessary or expedient for carrying out any of the purposes of this Act, or
- (b) contribute towards the cost of any such survey made by any other local authority.

Power to make surveys, or contribute towards their cost.

Power of Entry.

168. (1) The Chairman may, with or without assistants or workmen, enter into or upon any land, in order—

Power of entry.

- (a) to make any inspection, survey, measurement, valuation or inquiry,
- (b) to take levels,

(Chapter VIII.—Supplemental Provisions.—Sec. 169.)

- (c) to dig or bore into the sub-soil,
- (d) to set out boundaries and intended lines of work,
- (e) to mark such levels, boundaries and lines by placing marks, and cutting trenches, or
- (f) to do any other thing,

whenever it is necessary to do so for any of the purposes of this Act or any rule made or scheme sanctioned hereunder or any scheme which the Board intend to frame hereunder :

Provided as follows :—

- (a) no such entry shall be made between sunset and sunrise ;
- (b) no dwelling-house, and no public building or hut which is used as a dwelling-place, shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours' previous written notice of the intention to make such entry ;
- (c) sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to females to remove to some part of the premises where their privacy need not be disturbed ;
- (d) due regard shall always be had, so far as may be compatible with the exigencies of the purpose, for which the entry is made, to the social and religious usages of the occupants of the premises entered.

(2) Whenever the Chairman enters into or upon any land in pursuance of sub-section (1), he shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid ; and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Board, whose decision shall be final.

Penalties.

**Punishment
for acquiring
share or interest
in contract, etc.,
with the Board.**

169. If any Trustee, or any officer or servant of the Board, knowingly acquires, directly or indirectly, by himself or by any partner, employer or employee, otherwise than as such Trustee, officer or servant, any share or interest in any contract or employment with, by, or on behalf of, the Board,

of 1911.]

(Chapter VIII.—Supplemental Provisions.—

Secs. 170-171A.)

not being a share or interest such as, under sub-section (2) of section 9, it is permissible for a Trustee to have without being thereby disqualified for being appointed a Trustee,

he shall be deemed to have committed the offence made punishable by section 168 of the Indian Penal Code.

Act XLV
of 1860.

170. If any person, without lawful authority,—

Penalty for
removing
fence, etc.,
in street.

(a) removes any fence or shoring-timber, or removes or extinguishes any light, set up under section 59, or

(b) infringes any order given, or removes any bar, chain or post fixed, under section 60, sub-section (2),

he shall be punishable with fine which may extend to fifty rupees.

171. ¹If any person, without the permission of the Chairman required by section 63, sub-section (8), erects, re-erects or adds to any wall (exceeding ten feet in height) or building which falls within the street alignment or building line of a projected public street shown in any plan sanctioned by the Provincial Government² under the said section], he shall be punishable—

Penalty for
building
within street
alignment or
building line
of a projected
public street.

(a) with fine which may extend, in the case of a masonry building or a wall, to five hundred rupees, and, in the case of a hut, to fifty rupees, and

(b) with further fine which may extend, in the case of a masonry building or a wall, to one hundred rupees, and, in the case of a hut, to ten rupees for each day after the first during which the projection continues.

³171A. If the owner for the time being of any wall or building in respect of which an agreement has been executed as provided in section 63, sub-section (9), fails—

Penalty for
failure to
remove wall
or building in
respect of
which agree-
ment has been
executed.

(a) to remove such wall or building, or any specified portion thereof, when so required by notice issued under that sub-section, or,

¹These words were substituted by s. 5 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

²The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Section 171A was inserted by s. 6 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

[Ben. Act V

(Chapter VIII.—Supplemental Provisions.—Secs. 172-174.)

- (b) within fifteen days from the receipt of such notice, to authorize the Chairman, by permission in writing, to remove the said wall, building or portion,

he shall be punishable—

- (i) with fine which may extend, in the case of a masonry wall or building, to one hundred rupees, and, in the case of a hut, to twenty rupees; and
- (ii) with further fine which may extend, in the case of a masonry wall or building, to ten rupees, and, in the case of a hut, to five rupees, for each day after the first during which the failure continues.

172. [*Penalty for failure to set back building or wall on requisition.*] Rep. by s. 7 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

Penalty for failure to comply with requisition made by auditor.

173. If any person fails to comply with any requisition made under section 131, he shall be punishable—

- (a) with fine which may extend to one hundred rupees; or
- (b) in case of a continuing failure, with fine which may extend to fifty rupees for each day after the first during which the failure continues.

Penalty for obstructing contractor or removing mark.

174. If any person—

- (a) obstructs or molests any person with whom the Chairman has entered into a contract on behalf of the Board, in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue or in consequence of this Act or any rule made hereunder, or
- (b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorized by this Act or any rule made or scheme sanctioned hereunder.

he shall be punishable with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to two months.

of 1911.]

(Chapter VIII.—Supplemental Provisions.—
Secs. 174A-176.)

¹ Recovery of expenses.

174A. When a written notice, issued under section 63, sub-section (9), for the removal of a wall or building, or any portion thereof, is not complied with by the owner thereof for the time being as provided in section 171A, the Chairman may proceed to remove such wall, building or portion and the expenses incurred in effecting such removal shall be recoverable by sale of the materials or other things removed.

Removal of wall or building and recovery of expenses.

175. [*Fines, damages and proceeds of confiscations to be paid to board.*] Omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

*Suspension or abolition, and re-imposition, of taxation or
Municipal contributions.*

176. (1) Whenever the ²[Provincial Government] considers that any duty or tax imposed by Chapter V, or any payment required by section 88, or any portion of any such duty, tax or payment, as the case may be, is not required for the purposes of this Act, it may, by notification 3* * *

Suspension or abolition, and re-imposition, of taxation or Municipal-contributions.

- (a) suspend, for any specified period, the levy of such duty or tax or any specified portion thereof, or the making of such payment or any specified portion thereof, or
- (b) abolish such duty, tax or payment, or any specified portion thereof, from a date to be specified in the notification.

(2) If at any time the ²[Provincial Government] considers that any duty, tax or payment, or any portion thereof, which has been suspended or abolished under sub-section (1) is required for the purposes of this Act, it may, by notification, 3* * * cancel, such suspension or abolition, wholly or in part, as it may think fit, from a date to be specified in the notification.

¹This heading and s. 174A were inserted by s. 8 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

²See foot-note 2 on p. 294, *ante*.

³The words "with the previous sanction of Government of India" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

(Chapter VIII.—Supplemental Provisions.—Sec. 177.)

Dissolution of Board.

Ultimate
dissolution of
Board, and
transfer of
their assets
and liabilities
to the
Corporation.

177. (1) When all schemes sanctioned under this Act have been executed, or have been so far executed as to render the continued existence of the Board, in the opinion of the ¹[Provincial Government], unnecessary, the ¹[Provincial Government] may, by notification, ² * * * declare that the Board shall be dissolved from such date as may be specified in this behalf in such notification; and the Board shall be deemed to be dissolved accordingly.

(2) From the said date—

- (a) all properties, funds and dues which are vested in or realizable by the Board and the Chairman, respectively, shall vest in and be realizable by the Corporation and the ³[Executive Officer of the Corporation] respectively; and
- (b) all liabilities which are enforceable against the Board shall be enforceable only against the Corporation; and
- (c) for the purpose of completing the execution of any scheme, sanctioned under this Act, which has not been fully executed by the Board, and of realizing properties, funds and dues referred to in clause (a), the functions of the Board and the Chairman under this Act shall be discharged by the Corporation and the ³[Executive Officer of the Corporation], respectively; and
- (d) the Corporation shall keep separate accounts of all moneys respectively received and expended by them under this Act, until all loans raised hereunder have been repaid, and until all other liabilities referred to in clause (b) have been duly met.

¹See foot-note 2 on p. 294, *ante*.

²The words "with the previous sanction of the Government of India" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

³See foot-note 1 on p. 296, *ante*.

of 1911.]

(*The Schedule.—Secs. 1-5.*)

THE SCHEDULE.

(*Referred to in section 71.*)

I of 1894. FURTHER MODIFICATIONS IN THE LAND ACQUISITION ACT,
1894.

1. After clause (e) of section 3 the following shall be deemed to be inserted, namely— Amendment
of section 3.

“(e) the expression “local authority” includes the Board of Trustees constituted under the Calcutta Improvement Act, 1911.”

Ben. Act V
of 1911.

2. Rep. by s. 2 of the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922).

3. In section 15, for the word and figures “and 24” the figures, word and letter “24 and 24A” shall be deemed to be substituted. Amendment
of section 15.

4. (1) In section 17, sub-section (3), after the figures “24” the words, figures and letter “or section 24A” shall be deemed to be inserted. Amendment
of section 17.

(2) To the said section 17 the following shall be deemed to be added, namely :—

“(4) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by a salaried Presidency Magistrate or a Magistrate of the first class to be unhealthy.

“(5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

“(6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession.”

5. After section 17 the following shall be deemed to be inserted, namely :— New section
17A.

“17A. In every case referred to in section 16 or section 17, the Collector shall, upon payment to Board of the cost of acquisition, make over charge of the land to the Board; and the land shall thereupon vest in the Board, subject to the liability of the

(The Schedule.—Secs. 6-9.)

Board to pay any further costs which may be incurred on account of its acquisition.”

6, 7, 8 and 9 (1). *Rep. by s. 2 of the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922).*

Amendment
of section 23.

9. (2) At the end of section 23 the following shall be deemed to be added, namely :—

“(3) For the purposes of clause *first* of sub-section (1) of this section,—

(a) the market-value of the land shall be deemed to be the market-value according to the disposition of the land at the date of the publication of the declaration relating thereto under section 6 ;

(b) if it be shown that, before such declaration was published, the owner of the land had taken active steps and incurred expenditure to secure a more profitable disposition of the same, further compensation, based on his actual loss, may be paid to him :

¹(bb) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;

¹(bbb) if any person, without the permission of the Chairman required by section 63, sub-section (8), of the Calcutta Improvement Act, 1911, has erected, re-erected or added to any wall (exceeding ten feet in height) or building within the street alignment or building line of a projected public street, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded ;

Ben. Act V
of 1911.

(c) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid declaration was published such increase shall be disregarded, unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;

¹Clauses (bb) and (bbb) were inserted by s. 9 of the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915).

of 1911.]

(The Schedule.—Secs. 10, 11.)

- (d) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ; and
- (e) if the market-value of any building is specially high in consequence of the building being so over-crowded as to be dangerous to the health of the inmates, such over-crowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from over-crowding."

10. For clause *seventhly* of section 24 the following shall be deemed to be substituted, namely :—

Amendment
of section 24.

" *seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date of the publication of the declaration under section 6, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

11. After section 24 the following shall be deemed to be inserted, namely :—

New section
24A.

" 24A. In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely :—

Further
provisions for
determining
compensation.

(1) when any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under section 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;

(2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state ;

(3) if, in the opinion of the Tribunal, any building, which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human

[Ben. Act V of 1911.]

(The Schedule.—Secs. 12-14.)

habitation, the amount of compensation shall not exceed the value of the materials of the building, *minus* the cost of demolishing the building."

12. *Rep. by s. 2 of the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922).*

New sections
48A and 48B.

13. After section 48 the following shall be deemed to be inserted, namely :—

" 48A. (1) If, within a period of two years from the date of the publication of the declaration under section 6, in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

" 48B. No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of a payment, in pursuance of sub-section (4) of section 78 of the Calcutta Improvement Act, 1911."

Ben. Act
V of 1911.

14. *Rep. by s. 15 of the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931).*

Bengal Act II of 1912.

(The Bengal Mining Settlements Act, 1912).¹

(30th March 1912.)

An Act to provide for the better control and sanitation of Mining Settlements in Bengal.

Whereas it is expedient to provide for the better control and sanitation of mining settlements in Bengal ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Mining Settlements Act, 1912; and	Short title and extent.
----------------------------------------------------------------------------	-------------------------

(2) It extends to the whole of Bengal² 3* * *

2. The expressions "agent," "employed," "mine" and "owner," as used in this Act, shall have the same meaning as in section 3 of the Indian Mines Act. [1923.]

3. (1) The ⁵[Provincial Government] may, by notification in the ⁶[Official Gazette], appoint, for any area or areas in which persons employed in a mine reside, a Mines Board of Health, consisting of not less than five or more than nine persons ; and shall appoint one of the members to be Chairman.

(2) Two of the persons appointed under sub-section (1) shall be nominated by owners of mines or their representatives :

Provided that, if the Board consists of more than five members, three shall be so nominated.

(3) One of the persons appointed under sub-section (1) shall be nominated by persons who receive royalties, rents or fines from mines.

(4) Nominations under sub-section (2) or sub-section (3) must be made under such procedure, and within such period, as may be prescribed by rules made under this Act; and, in default of nomination in accordance with such rules, the ⁵ Provincial Government may appoint any person it thinks fit.

4. (1) The ⁵[Provincial Government] may, of its own motion, or after considering any report submitted to it by a Mines Board of Health, publish a notice in the ⁶[Official Gazette] that the ⁷[area] is to be a mining settlement.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1911, Pt. IV, p. 341; for Report of the Select Committee, see *ibid*, 1912, pp. 136, 137; for Proceedings in Council, see *ibid*, 1911, Pt. IVA, pp. 346 to 348, *ibid*, 1912, Pt. IVA, p. 27, also *Calcutta Gazette* Extraordinary, dated the 30th March, 1912, pp. 140 to 143.

LOCAL EXTENT.—This Act originally extended to the whole of the former Province of Bengal. So far as the present Presidency of Bengal is concerned, it extends to Western Bengal only.

*This means Bengal as constituted in March 1912.

*The words "including the Sonthal Parganas" were omitted by s. 2 of the Bengal Mining Settlements (Amendment) Act, 1931 (Ben. Act IV of 1931).

⁴This word was substituted for the figures "1901" by s. 3, *ibid.*

⁵These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

*These words were substituted for the words "local official (Gazette)", *ibid.*

(Secs. 5, 6.)

Gazette] and in such other manner (if any) as it may think fit, intimating its intention to declare any area (not being or forming part of a mine) to be a mining settlement for the purposes of this Act.

(2) The ¹[Provincial Government] shall consider any objections to the intended declaration which may be submitted to it in writing within such period as may be specified in this behalf in the said notice,

and may then, by notification in the ²[*Official Gazette*], declare that any area or portion of an area referred to in the said notice shall, for the purposes of this Act, be a mining settlement and be subject to the authority of such Mines Board of Health as the ¹[Provincial Government] may designate.

Appointment,
status and duties
of Sanitary
Officers.

5. (1) The ¹[Provincial Government] shall appoint as many Sanitary Officers as it may consider necessary for mining settlements, and shall declare the Mines Board of Health to which each such officer shall be subordinate.

(2) Every Sanitary Officer shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Act XLV
of 1860.

(3) It shall be the duty of a Sanitary Officer appointed to a mining settlement or any part thereof—

(a) to report to the Mines Board of Health what measures should, in his opinion, be taken—

(i) to provide for the supply of filtered, boiled or other water,

(ii) to provide for sanitation and conservancy, and

(iii) to provide for the housing of residents ; and

(b) to exercise, subject to the control of the Mines Board of Health to which he is subordinate, such other functions, consistent with the objects of this Act and calculated to prevent the outbreak or spread of dangerous epidemic disease, as the ¹[Provincial Government] may by general or special order, direct, or as may be delegated to him by such Board.

Notice
requiring owners
to execute and
maintain works
of sanitation, or
to carry on
periodical
sanitary
operations.

6. (1) If the Mines Board of Health approve any measures reported by a Sanitary Officer under clause (a) of sub-section (3) of section 5.

or if they consider that any other measures should be taken to provide for any of the purpose referred to in that clause, the Board shall serve,—

(a) on the owners of all mines in which are employed persons residing in the mining settlement, or in the part of the mining settlement to which such measures relate, or

(b) on the holders of the land occupied by such mining settlement or part, if they are not the owners of the said mines,

¹See foot-note 5 on p. 375, *ante*.

²See foot-note 6 on p. 375, *ante*.

of 1912.]

(Secs. 7-10.)

a notice specifying such measures and requiring such owners or landholders—

- (i) to execute, within a period to be fixed by the notice, all works that the Board may consider necessary for carrying such measures into effect, and to maintain in good repair all works so executed, or
- (ii) to carry on continuously such periodical operations as the Board may direct, for carrying such measures into effect, or
- (iii) both to execute and maintain works and to carry on operations as aforesaid.

(2) Nothing in this section shall apply to landholders other than proprietors, permanent tenure-holders, rent-free holders or holders of a maintenance grant.

7. If any work required by a notice served under section 6 be not executed to the satisfaction of the Board within the period fixed by the notice, or within such further period (if any) as may be allowed by the Board, or

Power for Mines Board of Health to execute work in default of owners.

if any work executed in pursuance of any such notice be not maintained in repair to the satisfaction of the Board, or

if any operations required by any such notice be not carried on to the satisfaction of the Board,

the Board, after serving a warning notice on the defaulters, shall prepare an estimate of the cost of the work which ought, in their opinion, to be carried out, and may entertain any establishment necessary for the preparation of such estimate, and may also cause such work to be executed.

8. Any of the powers or duties conferred or imposed by section 6 or section 7 upon a Mines Board of Health may be exercised or performed by the Chairman of the Board in any case which he considers to be of such urgency as to render it impracticable to hold a meeting of the Board.

Power for Chairman to discharge functions of Board in certain cases.

9. Any notice sent by post under section 6 or section 7 shall be forwarded under registered cover.

Service of notices.

10. (1) All expenses incurred by a Mines Board of Health for the purposes of this Act, other than expenses under section 7 and section 8, shall be charged to—

Charging, apportionment] and recovery of expenses.

- (a) all owners of mines in which are employed persons residing in the mining settlements which are subject to the authority of that Board, and
- (b) all persons who receive any royalty, rent or fine from such mines.

(2) All expenses incurred by a Mines Board of Health under section 7, or by the Chairman thereof under section 8, whether or not they exceed the estimate prepared under the former section,

(Sec. 11.)

and all expenses incurred by any holder of land in executing or maintaining any work or carrying on any operations in pursuance of a notice served under clause (b) of sub-section (1) of section 6,

shall be charged to—

- (i) all owners of mines in which are employed persons residing in the settlement or part, and
- (ii) all persons who receive any royalty, rent or fine from such mines :

Provided that, if it can be shown to the satisfaction of the Board that the insanitary condition is distinctly referable to any act or omission on the part of one or more mine-owners in respect to his or their property, the Board may direct that the expenses incurred shall be payable by such owner or owners only.

(3) Save in the case specified in the proviso to sub-section (2), the expenses referred to in sub-sections (1) and (2) shall be charged to the said owners and persons in such proportions as the ¹[Provincial Government] may, from time to time, direct :

Provided that the assessment shall be based—

- (i) in the case of owners of mines, on the output of their mines ; and
- (ii) in the case of the receivers of any royalty, rent or fine, on the road cess payable by such persons.

(4) All expenses chargeable under this section shall be recoverable as if they were arrears of land-revenue.

²(4a) The expenses due from any owner in respect of any mine shall, subject to the prior payment of the land-revenue (if any) due to the Government thereupon, be a first charge upon the said mine, and upon the movable property (if any) found within such mine and belonging to the said owner.

(5) When any expenses incurred by any holder of land in executing or maintaining any work or carrying on any operations in pursuance of a notice served under clause (b) of sub-section (1) of section 6, have been recovered, they shall be repaid to him :

Provided that, if any question arises as to the amount of expenses incurred by such landholder, the award of the Mines Board of Health shall, subject to an appeal to the Commissioner, be final.

11. (1) The ¹[Provincial Government] may, by notification in²the ³[*Official Gazette*], make rules for carrying out the

**Power to
make rules.**

¹See foot-note 5 on p. 375, *ante*.

²Sub-section (4a) was inserted by s. 4 of the Bengal Mining Settlements (Amendment) Act, 1931 (Ben. Act IV of 1931).

³See foot-note 6 on p. 375, *ante*.

of 1912.]

(Sec. 11.)

purposes and objects of this Act in respect of all mining settlements or any groups or classes of mining settlements.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) provide for the nomination, appointment and tenure of office of members of a Mines Board of Health and regulate the procedure of such Board and the powers and functions of the Chairman ;
- (b) regulate all expenditure to be incurred by a Mines Board of Health, and the methods under which sums due to it may be calculated and recovered ;
- (c) regulate the duties and powers of Sanitary Officers, and provide for appeals from their orders ;

1* * * * *

(3) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(4) The date to be specified as that on or after which a draft of rules proposed to be made under this section will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

[V of 1923.

(5) Where a Mining Board has been constituted under ²[section 10 of the Indian Mines Act, 1923,], any rule to be made under this Act shall, before it is published for criticism under sub-section (3), be referred to the Mining Board, and the rule shall not be so published until the said Board has been consulted as to the suitability of its provisions.

(6) All rules made under this section shall be published in the ³[*Official Gazette*], and, on such publication, shall have effect as if enacted in this Act.

¹Clauses (d) to (i) were omitted by s. 5(a) of the Bengal Mining Settlements (Amendment) Act, 1931 (Ben. Act IV of 1931).

²These words and figures were substituted for the words and figures "section 9 of the Indian Mines Act, 1901" by s. 5(b), *ibid*.

³See foot-note 6 on p. 375, *ante*.

(Sec. 11A.)

Power of Board to make by-laws.

¹11A. (1) A Mines Board of Health may, after previous publication, make by-laws—

- (i) defining the duties of owners, agents and managers of mines in respect of a mining settlement, and of all persons acting under them;
- (ii) defining the matters in respect of which notices, returns and reports shall be furnished by owners, agents and managers of mines, the form of such notices, returns and reports, the persons and authorities to whom they are to be furnished, and the particulars to be contained in them ;
- (iii) defining the plans (if any) to be kept by owners, agents and managers of mines within a mining settlement, and the manner and places in which they are to be kept for purposes of record ;
- (iv) providing for the supply of filtered, boiled or other water and for sanitation and conservancy in the mining settlement;
- (v) providing for the taking of measures to prevent the outbreak or spread of and to combat epidemic and other diseases in the mining settlement ;
- (vi) providing against the accumulation of water (other than water in mines) in the mining settlement ;
- (vii) regulating the construction and sanitation of residential buildings within the mining settlement ;
- (viii) prescribing standards of accommodation in cases² where accommodation is provided for persons³ employed in mines within the mining settlement ;
- (ix) defining the medical assistance to be provided by the owners of mines within the mining settlement for the labourers employed under them ;
- (x) providing for the prevention or abatement of nuisances affecting the public health committed by any persons within the limits of the mining settlement ; and
- (xi) generally for carrying out the purposes of this Act and for promoting the safety, health and welfare of persons employed in mines within the mining settlement.

(2) By-laws made under this section shall not take effect until they have been confirmed by the ²[Provincial Government] and published in the ³[*Official Gazette*].

¹Section 11A was inserted by s. 6 of the Bengal Mining Settlements² (Amendment) Act, 1931 (Ben. Act IV of 1931).

²See foot-note 5 on p. 375, *ante*.

³See foot-note 6 on p. 375, *ante*.

of 1912.]

(Secs. 12-15.)

12. A Sanitary Officer may, within any mining settlement for which he is appointed,—

Powers of
Sanitary
Officers.

- (a) make such examination and inquiry as he thinks fit, in order to ascertain whether the provisions of this Act and of the rules ¹[by-laws] and orders made thereunder are observed ;
- (b) enter, with such assistants (if any) as he thinks fit, inspect and examine any mining settlement or any part thereof, at all reasonable times by day or by night ;
- (c) examine into, and make inquiry respecting, the sanitary condition of any mining settlement or any part thereof, and the sufficiency of the rules ²[and by-laws] for the time being in force in the settlement ; and
- (d) do all other things required of him by or under this Act.

13. The owners, agents and managers of mines in which are employed persons residing in any mining settlement, or the owners of the land occupied by such settlement, if they are not the owners of such mines,

Facilities to
be afforded
to Sanitary
Officers.

shall furnish the Sanitary Officer, on requisition, with all reasonable facilities for making any entry, inspection, examination or inquiry under this Act, in relation to the sanitary condition of such settlement.

14. A Mines Board of Health shall have the powers of a Civil Court for the purpose of enforcing the attendance of witnesses and compelling the production of documents ; and every person required by any such Board to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

Powers of
Mines Board
of Health
for obtaining
evidence.

Act XLV
of 1860.

15. (1) Whoever obstructs any Sanitary Officer in the discharge of his duties under this Act, or refuses or wilfully neglects to furnish him with the means necessary for making any entry, inspection, examination or inquiry thereunder in relation to any mining settlement, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Penalties for
offences.

(2) Whoever makes, gives or delivers any notice or return required by or under this Act which contains a statement, entry or detail which is not, to the best of his knowledge or belief, true, shall be punishable with fine which may extend to five hundred rupees.

¹This word was inserted by s. 7 (a) of the Bengal Mining Settlement² (Amendment) Act, 1931 (Ben. Act IV of 1931).

²These words were inserted by s. 7(b), *ibid.*

(Secs. 16-19.)

(3) Whoever--

- (a) fails to comply with any requisition or order made under any provision of this Act or of any rule ¹[by-law] or order made thereunder; or
- (b) contravenes any provision of this Act or any ²[rule, by-law or order made thereunder,], for the breach of which no penalty is otherwise provided,

shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing breach under clause (a) of this sub-section, with a further fine which may extend to fifty rupees for every day during which the breach is proved to have been persisted in after the date of the receipt by him of the requisition or order referred to in that clause.

(4) All fines realised under this section shall be made over to the Mines Board of Health at whose instance the prosecution was instituted, to be employed in furtherance of the objects of this Act.

Prosecution
of owner,
agent or
manager.

16. No prosecution shall be instituted against any owner, agent or manager of a mine for any offence against this Act or any ²[rule, by-law or order made thereunder,], except at the instance of a Mines Board of Health.

Limitation
of prosecutions.

17. No Court shall take cognizance of any offence against this Act or any ²[rule, by-law or order made thereunder,] unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Cognizance
of offences.

18. No Court inferior to that of a Magistrate of the first class or Subdivisional Magistrate shall try any offence against this Act or any ²[rule, by-law or order made thereunder,] which--

- (a) is alleged to have been committed by any owner, agent or manager of a mine, or
- (b) is punishable with imprisonment.

Power of
Provincial
Government to
alter or rescind
orders.

19. The ³[Provincial Government] may reverse or modify any order passed under this Act by any authority.

¹This word was inserted by s. 8(a), of the Bengal Mining Settlements (Amendment) Act, 1931 (Ben. Act IV of 1931).

²These words were substituted for the words "rule or order thereunder" by ss. 8 and 9 of the Bengal Mining Settlements (Amendment) Act, 1931 (Ben. Act IV of 1931).

³See foot-note 5 on p. 375, *ante*.

Bengal Act II of 1913.

(The Bengal Board of Revenue Act, 1913.)¹

(23rd April 1913.)

An Act to alter the constitution of the Board of Revenue for Bengal.

Whereas it is expedient to alter the constitution of the Board of Revenue for Bengal;

55 & 56
Vict.,
c. 14.

And whereas the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act 1892, to the passing of this Act ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Board of Revenue Act, 1913. Short title.

2. The Board of Revenue for the Presidency of Fort William in Bengal shall be called the Board of Revenue for Bengal. Designation of Board.

3. The said Board shall consist of one Member only, to be appointed by the ²[Provincial Government] by notification in the ³[*Official Gazette*] : Number of Members of Board.

Provided that the ²[Provincial Government] may at any time, by like notification, * * * * * appoint a temporary additional Member.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1913, Pt. IV, p. 5; for Report of the Select Committee, see *ibid*, Pt. IV, p. 62; for Proceedings in Council, see *ibid*, Pt. IVA, pp. 13, 14, 22 to 26 and 399.

LOCAL EXTENT.—This Act extends to the whole of the present Province of Bengal.

The application of this Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4 (2).

²These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "local official Gazette", *ibid*.

⁴The words "with the previous sanction of the Government of India" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

(Secs. 4-7.)

Powers and
duties of
additional
Member.

4. An additional Member of the Board of Revenue appointed under the proviso to section 3 shall exercise and perform such powers and duties of the Board as the ¹[Provincial Government] may direct.

Construction
of references
to former
Boards.

5. All references in any enactment, or in any notification, order, scheme, rule, form or by-law issued, made or prescribed under any enactment, to—

- (a) the Board of Revenue as constituted under the Bengal Board of Revenue Regulation, 1822², and under clause *First* of section 4 of the Bengal Revenue Commissioners Regulation, 1829, or III of
1822.
I of 1829.
- (b) the Board whose functions were transferred to the said Board of Revenue by the Bengal Board of Revenue Act, 1850², XLIV of
1850.

shall be construed as references to the Board as re-constituted by or under this Act.

Review of
orders by
Board.

6. (1) Any person considering himself aggrieved by any order of the Board of Revenue may apply to the Board for a review of the same; and, if the Board considers there are sufficient reasons for so doing, it may review the order and pass such further order as it thinks fit.

(2) Every application under sub-section (1) for a review of any order must be made within a period of three months from the date of the order:

Provided that the Board may, in its discretion in any case extend such period, if sufficient reasons be shown for so doing.

7. [*Repeal.*] *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).*

¹See foot-note 2 on p. 383, *ante*.

²Ben. Reg. III of 1822 and Act XLIV of 1850, are repealed by this Act, *see* the Schedule.

of 1913.]

(The Schedule.)

THE SCHEDULE.

[Enactments repealed.]

*Rep. by the Bengal Repealing and Amending Act, 1938 (Ben.
Act I of 1939).*

Bengal Act III of 1913.

(The Bengal Public Demands Recovery Act, 1913.)

CONTENTS.

PART I.

Preliminary.

SECTION.

1. Short title, commencement and extent.
2. (*Repealed.*)
3. Definitions.

PART II.

Filing, service and effect of certificates, and hearing of objections thereto.

4. Filing of certificate for public demand payable to Collector.
5. Requisition for certificate in other cases.
6. Filing of certificate on requisition.
7. Service of notice and copy of certificate on certificate-debtor.
8. Effect of service of notice of certificate.
9. Filing of petition denying liability.
10. Hearing and determining of such petition.

PART III.

Execution of Certificates.

11. Who may execute certificate.
12. Transmission of certificate to another certificate-officer for execution.
13. When certificate may be executed.
14. Modes of execution.
15. Certain sales by whom to be held.
16. Interest, costs and charges recoverable.

Attachment.

17. Attachment of property.
18. Payment of moneys, contrary to attachment, to be void.
19. Attachment of decree.

Sale.

20. Purchaser's title.
21. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

Setting aside sale.

22. Application to set aside sale of immovable property on deposit.
23. Application to set aside sale of immovable property on ground of non-service of notice or irregularity.
24. Application to set aside sale on ground that certificate-debtor had no saleable interest or that property did not exist.
25. Sale when to become absolute or be set aside.

*Disposal of proceeds of execution.***SECTION.****[Ben. Act III]**

26. Disposal of proceeds of execution.

Resistance to purchaser after sale.

27. Application by purchaser resisted or obstructed in obtaining possession of immovable property.
28. Procedure on such application.

Arrest, detention and release.

29. Power of arrest and detention.
30. Release from arrest and re-arrest.
31. Detention in, and release from, prison.
32. Release on ground of illness.
33. Prohibition of arrest or detention of women and persons under disability.

PART IV.**Reference to Civil Court.**

34. Suit in Civil Court to have certificate cancelled or modified.
35. Grounds for cancellation or modification of certificate by Civil Court.
36. Suit to recover possession of, or to set aside sale of, immovable property, where notice of certificate not served.
37. General bar to jurisdiction of Civil Courts, save where fraud alleged.

PART V.**Rules.**

38. Effect of rules in Schedule II.
39. Power of Board of Revenue to make rules as to procedure.
40. Publication and effect of rules made under section 39.

PART VI.**Supplemental Provisions.**

41. Persons under disability.
42. Continuance of certificates.
43. Procedure on death of certificate-debtor.
44. Cancellation of certificates.
45. Costs.
46. Compensation.
47. Entry into dwelling-house.
48. Application of Act XVIII of 1850.
49. Officer to have powers of Civil Court for certain purposes.
50. Control over officers.
51. Appeal.
52. Bar to second appeals.
53. Revision.
54. Review.
55. Saving of other Acts.
56. Application of the Indian Limitation Act, 1908.
57. Certificate-officer deemed to be a Court.
58. Penalties.
59. Signature of documents by ministerial officers.
60 to 64. [Not printed here.]

of 1913.]

SCHEDULE I.

Public Demands.

SCHEDULE II.

RULES.

RULE.

Signature and Verification of Requisitions for Certificates.

1. Signature and verification of requisition for certificate.

Service of Notices.

2. Mode of service.
3. Service on certificate-debtor or his agent.
4. Service on adult male member of certificate-debtor's family.
5. Person served to sign acknowledgment.
6. Procedure where certificate-debtor refuses to accept service or cannot be found.
7. Endorsement of time and manner of service.
8. Examination of serving officer.
9. Service by post.

Petitions under Section 9, Denying Liability.

10. Signature and verification of petition denying liability.
11. Transfer of such petitions.

Execution of Certificates.

12. Execution in another district.

Attachment of Movable Property, etc.

13. Application for attachment of movable property in the possession of the certificate-debtor.
14. Procedure for the attachment of movable property when its value is up to Rs. 40 or above.
15. Attachment of movable property (other than agricultural produce) in possession of certificate-debtor.
16. Attachment of agricultural produce.
17. Provisions as to agricultural produce under attachment.
18. Attachment of debt, share, and other movable property not in possession of certificate-debtor.
- 18A. Rules regarding realisation of rents due to certificate debtor from the holders of subordinate interests "Garnishee Rules."
- 18B. Certificate-officer to issue notice to the Garnishee liable to pay rent.
- 18C. Certificate-officer to order the Garnishee to comply with the terms of notice.
- 18D. Certificate-officer to amend notice where the Garnishee disputes liability.
- 18E. Rule 43 to apply to an order made under rule 18C.
- 18F. Certificate-officer to order a third person to state the particulars of his claim if any.
- 18G. Certificate-officer to proceed under rule 18D in case the third person does not appear.
- 18H. Payment under rule 18B or rule 18C.
- 18I. Cost.
19. Attachment of share in movables.
20. Attachment of salary or allowances of public officer or servant of Railway Company or Local Authority.

RULE.

21. Attachment of negotiable instruments.
22. Attachment of property in custody of Court or public officer.
23. Attachment of immovable property.
24. Removal of attachment on satisfaction or cancellation of certificate.

Maintenance and custody while under attachment, of live-stock and other movable property.

25. Custody of property under attachment.
26. Removal of property to Court.
27. List of property under attachment.
28. Debtor's consent to the sale of the property under attachment.
29. Custody of property under attachment, while in Court.
30. Claim of any person other than the certificate-holder to the property under attachment.
31. Withdrawal of attachment.
32. Feeding and tending of live-stock under attachment.
33. Cost for feeding live-stock and expenses attending its removal to Court.
34. Responsibility of the *nazir* for safe custody and proper feeding.
35. Custody of live-stock in Government pounds.
36. Responsibility of the *nazir* for the custody of live-stock.
37. Rates to be allowed for the custody and maintenance of various descriptions of live-stock.
38. Fees to be charged where process of attachment of movable property is by actual seizure.
- 38A. Refund of custody fees.

Investigation of Claims and Objections.

39. Investigation by Certificate-officer.
40. Evidence to be adduced.
41. Release of property from attachment or sale.
42. Disallowance of claim to property attached.
43. Saving of suits to establish right to attached property.

Sale generally.

44. Power to order sale of attached property.
45. Sale of movable property falling under rule 15 or of value not exceeding Rs. 40 or of greater value.
46. Proclamation of sale by public auction.
47. Mode of making proclamation.
48. Time of sale.
49. Purchase of property by the certificate-holder.
50. Adjournment or stoppage of sale.
51. Defaulting purchaser answerable for loss on re-sale.
52. Restriction on bidding or purchase by officers.
53. Levy of poundage fees.
54. (Omitted.)

of 1913.]

Sale of movable property.

RULE.

55. Sale of agricultural produce.
56. Special provisions relating to growing crops.
57. Sale by public auction.
58. Irregularity not to vitiate sale, but any person injured may sue.
59. Delivery of movable property, debts and shares.
60. Transfer of negotiable instruments and shares.
61. Vesting order in case of other property.

Sale of immovable property.

62. Sale of tenure or holding at fixed rates, subject to registered and notified incumbrances.
63. Sale of tenure or holding at fixed rates, with power to avoid all incumbrances.
64. Sale of occupancy holding, with power to avoid all incumbrances.
65. Rules 62 to 64 not to apply in certain cases to certificate-holders who are co-sharer landlords.
66. Postponement of sale to enable certificate-debtor to raise amount due under certificate.
67. Prohibition of purchase of tenure or holding by certificate-debtor.
68. Deposit by purchaser and re-sale in default.
69. Time for payment of purchase-money in full.
70. Procedure in default of payment.
71. Fresh proclamation before re-sale.
72. Bid of co-sharer to have preference.
73. Return of purchase-money in certain cases.
74. Certificate to purchaser.
75. Delivery of property in occupancy of certificate-debtor.
76. Delivery of property in occupancy of tenant or other person.

Arrest and Detention.

77. Discretionary power to permit certificate-debtor to show cause against detention in prison.
78. Subsistence allowance.

Supplemental.

79. Register of certificates.
80. Payment by instalments.
81. Remittance to Certificate-officer of sums received under a certificate transferred for execution.
82. Entry of satisfaction.
83. Communication of satisfaction to other persons.
- 83A. Exemption of requisitions from Liquidator of Co-operative Societies from *ad valorem* fee.
- 83B. Procedure to be followed when one of two or more certificate-debtors is found to have died before the filing of certificate.

FORMS.

84. Forms in Appendix.

FORMS.

FORM NO.

1. Certificate of public demand.
2. Requisition for a certificate.
3. Notice to certificate-debtor.
4. Petition denying liability.
5. Notice to show cause why sale should not be set aside.
6. Summons to appear and answer charge of obstructing execution of certificate.
7. Warrant of committal.
8. Warrant of arrest.
9. Order committing certificate-debtor to the civil prison.
10. Order for the release of a person imprisoned in execution of a certificate.
11. Notice to legal representative of certificate-debtor.
- 11A. Warrant of attachment of movable property.
- 11B. Notice to persons added to the original certificate.
- 11C. Notice to surviving certificate-debtor.
12. Attachment in execution.—Prohibitory order, where the property consists of debts not being negotiable instruments, or of movable property not in the possession of the certificate-debtor.
13. Attachment in execution.—Prohibitory order, where the property consists of shares in the capital of a Corporation.
14. Attachment in execution.—Prohibitory order, where the property to be attached consists of movable property, to which the certificate-debtor is entitled subject to a lien or right of some other person to the immediate possession thereof.
15. Order to attach salary of public officer or servant of Railway Company or Local Authority.
16. Order of attachment of negotiable instrument.
17. Attachment.—Prohibitory order, where the property consists of money or of any security in the custody of a Court of Justice or officer of Government.
18. Notice to certificate-holder.
19. Warrant of sale of property.
20. Notice of the day fixed for settling a sale proclamation.
21. Proclamation of sale.
22. Order on the *Nazir* for causing publication of proclamation of sale.
23. Certificate, by officer holding a sale, of the deficiency of price on a re-sale of property by reason of the purchaser's default.
24. Notice to person in possession of movable property sold in execution.
25. Prohibitory order against the transfer of shares sold in execution.
26. Prohibitory order against payment of debts sold in execution to any other than the purchaser.
27. Certificate to certificate-debtor authorizing him to mortgage, lease or sell property.
28. Certificate of sale of land.
29. Order for delivery to certified purchaser of land at a sale in execution.
30. Notice to show cause why warrant of arrest should not issue.

Bengal Act III of 1913.

(The Bengal Public Demands Recovery Act, 1913.)¹

(30th April 1913.)

An Act to consolidate and amend the law relating to the recovery of public demands in Bengal.

Whereas it is expedient to consolidate and amend the law relating to the recovery of public demands in Bengal ;

And whereas the previous sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

55 & 56
Vct., c. 14.

It is hereby enacted as follows :—

PART I.

Preliminary.

1. (1) This Act may be called the Bengal Public Demands Recovery Act, 1913 ;

Short title,
commencement
and extent.

(2) It shall come into force on such date² as the ³[Provincial Government] may appoint by notification in the ⁴[*Official Gazette*] ; and

(3) It extends to the whole of Bengal.

2. [*Repeal.*] *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)*

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1913, Pt. IV, pp. 40, 41 ; for Report of Select Committee, see *ibid*, Pt. IV, pp. 69 to 72 ; for Proceedings in Council, see *ibid*, Pt. IVA, pp. 14, 15, 26, 399, 423 to 446.

LOCAL EXTENT.—This Act extends to the whole of the present Presidency of Bengal, see s. 1 (3).

It was extended to the Chittagong Hill Tracts by Notification No. 5839P., dated the 14th April, 1916.

²i.e., 1st July, 1913, see notification No. 985T.R., dated the 22nd May, 1913, published in the *Calcutta Gazette*, 1913, Part I, p. 789.

³These words were substituted for the words " Local Government " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "*Calcutta Gazette*", *ibid*.

(Part I.—Preliminary.—Part II.—Filing, service and effect of certificates, and hearing of objections thereto.—Secs. 3, 4.)

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

- (1) “certificate-debtor” means the person named as debtor in a certificate filed under this Act, and includes any person whose name is substituted or added as debtor by the Certificate-officer;
- (2) “certificate-holder” means the ¹[Government or person] in whose favour a certificate has been filed under this Act, and includes any person whose name is substituted or added as creditor by the Certificate-officer;
- (3) “Certificate-officer” means a Collector, a Sub-divisional officer, and any officer, appointed by a Collector, with the sanction of the Commissioner, to perform the functions of a Certificate-officer under this Act;
- (4) “movable property” includes growing crops;
- (5) “prescribed” means prescribed by rules;
- (6) “public demand” means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed under Part II; and
- (7) “rules” means rules and forms contained in Schedule II or made under section 39.

PART II.

Filing, service and effect of certificates, and hearing of objections thereto.

Filing of certificate for public demand payable to Collector.

4. When the Certificate-officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate, in the prescribed form,

¹These words were substituted for the words “Secretary of State for India in Council or other person” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1913.]

(Part II.—Filing, service and effect of certificates, and hearing of objections thereto.—Secs. 5-8.)

stating that the demand is due, and shall cause the certificate to be filed in his office.

5. (1) When any public demand payable to any person other than the Collector is due, such person may send to the Certificate-officer a written requisition in the prescribed form.

Requisition for certificate in other cases.

II of 1912.

¹Provided that no action shall be taken under this Act on a requisition made by a liquidator in pursuance of an order under clause (b) or clause (d) of sub-section (2) of section 42 of the Co-operative Societies Act, 1912 ²[or on a requisition made by a land mortgage bank registered under the said Act or an assignee of such bank], unless the requisition be countersigned by the Registrar of Co-operative Societies, Bengal.

VII of 1870.

(2) Every such requisition shall be signed and verified in the prescribed manner, and, except in such cases as may be prescribed, shall be chargeable with the fee of the amount which would be payable under the Court-fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

6. On receipt of any such requisition, the Certificate-officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate, in the prescribed form, stating that the demand is due; and shall include in the certificate the fee (if any) paid under section 5, sub-section (2); and shall cause the certificate to be filed in his office.

Filing of certificate on requisition.

7. When a certificate has been filed in the office of a Certificate-officer under section 4 or section 6, he shall cause to be served upon the certificate-debtor, in the prescribed manner, a notice in the prescribed form and a copy of the certificate.

Service of notice and copy of certificate on certificate-debtor.

8. From and after the service of notice of any certificate under section 7 upon a certificate-debtor,—

Effect of service of notice of certificate.

(a) any private transfer or delivery of any of his immovable property situated in the district

¹This proviso was inserted by s. 2 of the Bengal Public Demands Recovery (Amendment) Act, 1918 (Ben. Act I of 1918).

²These words were inserted by s. 2 of the Bengal Public Demands Recovery (Amendment) Act, 1938 (Ben. Act V of 1938).

(Part II.—Filing, service and effect of certificates, and hearing of objections thereto.—Part III—Execution of certificates—Secs. 9-11.)

in which the certificate is filed, or of any interest in any such property, shall be void against any claim enforceable in execution of the certificate; and

(b) the amount due from time to time in respect of the certificate shall be a charge upon the immovable property of the certificate-debtor, wherever situated, to which every other charge created subsequently to the service of the said notice shall be postponed.

Filing of
petition
denying
liability.

9. (1) The certificate-debtor may, within thirty days, from the service of the notice required by section 7, or, where the notice has not been duly served, then within 30 days from the execution of any process for enforcing the certificate, present to the Certificate-officer in whose office the certificate is filed, or to the Certificate-officer who is executing the certificate, a petition, in the prescribed form, signed and verified in the prescribed manner, denying his liability, in whole or in part.

(2) If any such petition is presented to a Certificate-officer other than the Certificate-officer in whose office the original certificate is filed, it shall be sent to the latter officer for disposal.

Hearing and
determining
of such
petition.

10. The Certificate-officer in whose office the original certificate is filed shall hear the petition, take evidence (if necessary), and determine whether the certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed: and may set aside, modify or vary the certificate accordingly:

Provided that, if the Certificate-officer is not the Collector, and considers that the petition involves a *bona fide* claim of right to property, he shall refer the petition to the Collector for orders; and the Collector, if he is satisfied that a *bona fide* claim of right of property is involved, shall make an order cancelling the certificate.

PART III.

Execution of Certificates.

Who may
execute
certificate.

11. A certificate filed under section 4 or section 6 may be executed by—

(a) the Certificate-officer in whose office the original certificate is filed, or

of 1913.]

(Part III.—Execution of certificates.—Secs. 12-14.)

- (b) the Certificate-officer to whom a copy of the certificate is sent for execution under section 12, sub-section (1).

12. (1) A certificate-officer in whose office a certificate is filed may send a copy thereof, for execution, to any other Certificate-officer

Transmission of certificate to another Certificate officer for execution.

(2) When a copy of a certificate is sent to any such officer, he shall cause it to be filed in his office, and thereupon the provisions of section 8 with respect to certificates filed in the office of a Certificate-officer shall apply as if such copy were an original certificate :

Provided that it shall not be necessary to serve a second notice and copy under section 7.

13. No step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of the service of the notice required by section 7, or, when a petition has been duly filed under section 9, until such petition has been heard and determined :

When certificate may be executed.

Provided that, if the Certificate-officer in whose office a certificate is filed is satisfied that the certificate-debtor is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a Civil Court, and that the realization of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such movable property.

14. Subject to such conditions and limitations as may be prescribed, a Certificate-officer may order execution of a certificate --

Modes of execution.

- (a) by attachment and sale, or by sale (without previous attachment), of any property, or
(b) by attachment of any decree, or

¹The words "in the same district or to the Collector of any other district" were omitted by s. 2 of the Bengal Public Demands Recovery (Amendment) Act, 1934 (Ben. Act III of 1934).

[Ben. Act III]

(Part III.—Execution of Certificates.—Secs. 15-19)

- (c) by arresting the certificate debtor and detaining him in the civil prison, or
- (d) by any two or all of the methods mentioned in clauses (a), (b) and (c).

*Explanation to clause (d).—*The Certificate-officer may, in his discretion, refuse execution at the same time against the person and property of the certificate-debtor.

Certain sales by whom to be held.

15. Where a revenue-paying estate or any share therein is liable to sale in execution of a certificate, such sale may be held either—

- (a) by the Certificate-officer exercising jurisdiction in the district to the revenue-roll of which the estate or share appertains, or
- (b) by the Certificate-officer exercising jurisdiction in the district in which such estate or share is situated.

Interest, costs and charges recoverable.

16. There shall be recoverable, in the proceedings in execution of every certificate filed under this Act,—

- (a) interest upon the public demand to which the certificate relates, at the rate of six and a quarter *per centum per annum* from the date of the signing of the certificate up to the date of realization.
- (b) such costs as are directed to be paid under section 45, and
- (c) all charges incurred in respect of—
 - (i) the service of notice under section 7, and of warrants and other processes, and
 - (ii) all other proceedings taken for realising the demand.

Attachment.

Attachment of property.

17. Property liable to attachment and sale in execution of a decree of a Civil Court may be attached and sold in execution of a certificate under this Act.

Payment of moneys, contrary to attachment, to be void.

18. Where an attachment has been made in execution of a certificate, any payment to the certificate-debtor of any debt, dividend or other moneys, contrary to such attachment, shall be void, as against all claims enforceable under the attachment.

Attachment of decree.

19. (1) The attachment of a Civil Court decree for the payment of money or for sale in enforcement of a mortgage

of 1913.]

(Part III.—Execution of Certificates.—Sec. 20.)

or charge shall be made by the issue to the Civil Court of a notice requesting the Civil Court to stay the execution of the decree unless and until—

- (i) the Certificate-officer cancels the notice, or
- (ii) the certificate-holder or the certificate-debtor applies to the Court receiving such notice to execute the decree.

Act V of
1908.

(2) Where a Civil Court receives an application under clause (ii) of sub-section (1), it shall, on the application of the certificate-holder or the certificate-debtor, and subject to the provisions of the Code of Civil Procedure, 1908, proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The certificate-holder shall be deemed to be representative of the holder attached to the decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

Sale.

20. (1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the certificate-debtor at the time of the sale, even though the property itself be specified. Purchaser's title.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

VIII of
1885.

(3) Notwithstanding anything contained in sub-section (1), in areas in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, where a tenure or holding is sold in execution of a certificate for arrears of rent due in respect thereof, the tenure or holding shall, subject to the provisions of section 22 of that Act, pass to the purchaser, subject to the interest defined in that chapter as "protected interests," but with power to annul the interests defined in that chapter as "incumbrances":

Provided as follows :—

- (i) a registered and notified incumbrance within the meaning of that chapter shall not be so annulled except in the case prescribed ; and
- (ii) the power to annul shall be exercisable only in the manner prescribed.

(Part III.—Execution of Certificates.—Secs. 21-22.)

(4) Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of sub-section (3) shall not apply.

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

21. (1) No suit shall be maintained, against any person claiming title under a purchase certified by the Certificate-officer in such manner as may be prescribed, on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Setting aside sale.

Application to set aside sale of immovable property on deposit.

22. (1) Where immovable property has been sold in execution of a certificate, the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Certificate-officer to set aside the sale, on his depositing—

- (a) for payment to the certificate-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of twelve and a half *per centum per annum*, calculated from the date of the certificate to the date when the deposit is made ;
- (b) for payment to the purchaser, as penalty a sum equal to five *per cent.* of the purchase-money, but not less than one rupee ; and
- (c) for payment to the Collector (where the certificate is for a public demand payable to the Collector), such outstanding charges due to the '[Crown] under any law for the time being in force as the Collector certifies to be payable by the certificate-debtor.

(2) Where a person makes an application under section 23 for setting aside the sale of his immovable property

¹This word was substituted for the word " Government " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1913.]

(Part III.—Execution of Certificates.—Secs. 23-25.)

he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this section.

23. (1) Where immovable property has been sold in execution of a certificate, the certificate-holder, the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within sixty days from the date of the sale, apply to the Certificate-officer to set aside the sale on the ground that notice was not served under section 7 or on the ground of a material irregularity in the certificate proceedings or in publishing or conducting the sale :

Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

Provided as follows :—

(a) no sale shall be set aside on any such ground unless the Certificate-officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity ; and

(b) an application made by a certificate-debtor under this section shall be disallowed unless the applicant either deposits the amount recoverable from him in execution of the certificate or satisfies the Certificate-officer that he is not liable to pay such amount.

(2) Notwithstanding anything contained in subsection (1), the Certificate-officer may entertain an application made after the expiry of sixty days from the date of the sale if he is satisfied that there are reasonable grounds for so doing.

24. The purchaser at any sale of immovable property in execution of a certificate may, at any time within sixty days from the date of the sale, apply to the Certificate-officer to set aside the sale on the ground that the certificate-debtor had no saleable interest in the property sold, or that the property did not exist at the time of the sale.

Application to set aside sale on ground that certificate-debtor had no saleable interest or that property did not exist.

25. (1) Where no application is made under section 22, section 23 or section 24, or where such an application is made and disallowed, the Certificate-officer shall make an order confirming the sale, and thereupon the sale shall become absolute.

Sale when to become absolute or be set aside.

(Part III.—Execution of Certificates.—Sec. 26-28.)

2) Where such an application is made and allowed, and where, in the case of an application under section 22, the deposit required by that section is made within thirty days from the date of the sale, the Certificate-officer shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

Disposal of proceeds of execution.

Disposal of
proceeds of
execution.

26. (1) Whenever assets are realized, by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner :—

- (a) there shall first be paid to the certificate-holder the costs incurred by him ;
- (b) there shall, in the next place, be paid to the certificate-holder the amount due to him under the certificate in execution of which the assets were realized ;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the certificate-holder therefrom any other amount recoverable under the procedure provided by this Act which may be due to him upon the date upon which the assets were realized ; and
- (d) the balance (if any) remaining after the payment of the amount (if any) referred to in clause (c) shall be paid to the certificate-debtor.

(2) If the certificate-debtor disputes any claim made by the certificate-holder to receive any amount referred to in clause (c), the Certificate-officer shall determine the dispute.

Resistance to purchaser after sale.

Application by
purchaser
resisted or
obstructed in
obtaining
possession of
immovable
property.

27. (1) If the purchaser of any immovable property sold in execution of a certificate is resisted or obstructed by any person in obtaining possession of the property, he may apply to the Certificate-officer.

(2) The Certificate-officer shall fix a day for investigating the matter, and shall summon the party against whom the application is made to appear and answer the same.

Procedure on
such application.

28. (1) If the Certificate-officer is satisfied that the resistance or obstruction was occasioned without any just cause by the certificate-debtor or by some person on his behalf, he shall direct that the applicant be put into possession of the property ; and, if the applicant is still resisted or

of 1913.]

(Part III.—Execution of Certificates.—Secs. 29-31.)

obstructed in obtaining possession, the Certificate-officer may also, at the instance of the applicant, order the certificate-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days.

(2) If the Certificate-officer is satisfied that the resistance or obstruction was occasioned by any person (other than the certificate-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the certificate-debtor, the Certificate-officer shall make an order dismissing the application.

Arrest, Detention and Release.

29. A certificate-debtor may be arrested in execution of a certificate at any hour and on any day, except as provided in section 47, and, when so arrested, shall, as soon as practicable, be brought before the Certificate-officer; and his detention may be in the civil prison of the district in which the Certificate-officer ordering the detention exercises jurisdiction, or, where such civil prison does not afford suitable accommodation, in any other place which the ¹[Provincial Government] may appoint for the detention of persons ordered by the Civil Courts of such district to be detained :

Power of arrest and detention.

Provided that, if the certificate-debtor pays the amount entered in the warrant of arrest as due under the certificate, and the cost of the arrest, to the officer arresting him, such officer shall at once release him.

30. (1) The Collector may order the release of a certificate-debtor who has been arrested in execution of a certificate, upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Certificate-officer and that he has not committed any act of bad faith.

Release from arrest and re-arrest.

(2) If the Certificate-officer has ground for believing the disclosure made by a certificate-debtor under sub-section (1) to have been untrue, he may order the re-arrest of the certificate-debtor in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by section 31, sub-section (1).

31. (1) Every person detained in the civil prison in execution of a certificate may be so detained,—

Detention in, and release from, prison.

(a) where the certificate is for a demand of an amount exceeding fifty rupees for a period of six months, and

(b) in any other case—for a period of six weeks:

¹See foot-note 3 on p. 393, *ante*.

(Part III.—Execution of Certificates.—Secs. 32, 33.)

Provided that he shall be released from such detention—

- (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or
- (ii) on the certificate being otherwise fully satisfied, or cancelled, or
- (iii) on the request of the person (if any) on whose requisition the certificate was filed, or of the Collector, or
- (iv) on the omission by the person (if any) on whose requisition the certificate was filed to pay the subsistence allowance fixed by the Certificate-officer ;

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii) without the order of the Certificate-officer.

(2) A certificate-debtor released from detention under this section shall not, merely by reason of his release, be discharged from his debt ; but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

Release on
ground of illness.

32. (1) At any time after a warrant for the arrest of a certificate debtor has been issued, the Certificate-officer may cancel it on the ground of his serious illness.

(2) Where a certificate-debtor has been arrested, the Certificate-officer may release him if, in the opinion of the Certificate-officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a certificate-debtor has been committed to the civil prison, he may be released therefrom—

- (a) by the Collector, on the ground of the existence of any infectious or contagious disease, or
- (b) by the Certificate-officer, or the Collector, on the ground of his suffering from any serious illness.

(4) A certificate-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by section 31, sub-section (1).

Prohibition of
arrest or deten-
tion of women
and persons
under disability.

33. Notwithstanding anything in this Act, the Certificate-officer shall not order the arrest or detention in the civil prison of—

- (a) a woman, or
- (b) any person who, in his opinion, is a minor or of unsound mind.

of 1913.]

(Part IV.—Reference to Civil Court.—Sec. 34.)

PART IV.

Reference to Civil Court.

34. The certificate-debtor may, at any time within six months—

Suit in Civil Court to have certificate cancelled or modified.

- (1) from the service upon him of the notice required by section 7, or
- (2) if he files, in accordance with section 9, a petition denying liability— from the date of the determination of the petition, or
- (3) if he appeals, in accordance with section 51— from an order passed under section 10— from the date of the decision of such appeal,

bring a suit in the Civil Court to have the certificate cancelled or modified, and for any further consequential relief to which he may be entitled :

Provided that no such suit shall be entertained—

- (a) in any case, if the certificate-debtor has omitted to file, in accordance with section 9, a petition denying liability, or to state in his petition denying liability the ground upon which he claims to have the certificate cancelled or modified, and cannot satisfy the Court that there was good reason for the omission, or
- (b) in the case of a certificate for a demand mentioned in Article 1 or Article 2 of Schedule I, if the certificate-debtor has not paid the amount due under the certificate to the Certificate-officer—
 - (i) within thirty days from the service of the notice required by section 7, or
 - (ii) if he has filed, in accordance with section 9, a petition denying liability— then within thirty days from the date of the determination of the petition, or
 - (iii) if he has appealed in accordance with section 51— then within thirty days from the decision of the appeal:

(Part IV.—Reference to Civil Court.—Secs. 35, 36.)

Provided also that no sale in execution of a certificate shall be set aside in such a suit unless the purchaser has been made a party to the suit and until a direction is made for the refund of the amount of the purchase-money, with such interest (if any) as the Court may allow.

Grounds for
cancellation or
modification of
certificate by
Civil Court.

35. (1) No certificate duly filed under this Act shall be cancelled by a Civil Court, except on one of the following grounds, namely:—

- (a) that the amount stated in the certificate was actually paid or discharged before the signing of the certificate;
- (b) that no part of the amount stated in the certificate was due by the certificate-debtor to the certificate-holder, or
- (c) that, in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a public officer under any law or any rule having the force of law, the proceedings of such Collector or public officer were not in substantial conformity with the provisions of such law or rule, and that in consequence thereof the certificate-debtor suffered substantial injury from some error, defect or irregularity in such proceedings.

(2) No certificate duly filed under this Act shall be modified by a Civil Court, except on one of the following grounds, namely:—

- (i) that a portion of the alleged debt was not due; or
- (ii) that the certificate-debtor has not received credit for any portion which he has paid.

(3) Nothing contained in this section shall interfere with the ordinary original jurisdiction of the High Court at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes.

Suit to recover
possession of, or
to set aside sale
of, immovable
property, where
notice of
certificate not
served.

36. Notwithstanding anything hereinbefore contained, a sale of immovable property in execution of a certificate shall not be held to be void on the ground that the notice required by section 7 has not been served; but a suit may be brought in a Civil Court to recover possession of such property or to set aside such sale on the ground that such notice has not been served, and that the plaintiff has sustained substantial injury by reason of irregularity:

Provided that no such suit shall be entertained:—

- (a) if instituted more than one year from the date on which possession of the property was delivered to the purchaser, or

of 1913.]

(Part IV.—Reference to Civil Court.—Part V—Rules.
—Secs. 37-39.)

- (b) if the certificate-debtor has made appearance in the certificate proceeding, or has applied to the Certificate-officer under section 22 or section 23 to set aside the sale.

37. Except as otherwise expressly provided in this Act every question arising between the certificate-holder and the certificate-debtor, or their representatives, relating to the making, execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Certificate-officer before whom such question arises, or of such other Certificate-officer as he may determine :

General bar to jurisdiction of Civil Courts, save where fraud alleged.

Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.

PART V.

Rules.

38. The rules in Schedule II shall have effect as if enacted in the body of this Act, until altered or annulled in accordance with the provisions of this part.

Effect of rules in Schedule II.

39. (1) The Board of Revenue may, after previous publication and with the previous sanction of the ¹[Provincial Government], make rules regulating the procedure to be followed by persons making requisitions under section 5 and by Collectors and Certificate-officers acting under this Act ; and may, by such rules, alter, add to or annul any of the rules in Schedule II .

Power of Board of Revenue to make rules as to procedure.

(2) Such rules shall not be inconsistent with the provisions in the body of this Act, but, subject thereto, may, in particular, and without prejudice to the generality of the power conferred by sub-section (1), provide for all or any of the following matters, namely :—

- (a) the signature and verification of requisitions made under section 5 ;
- (b) the Certificate-officers to whom such requisitions should be addressed ;
- (c) the cases in which such requisitions shall not be chargeable with a fee ;
- (d) the service of notices issued under section 7, the service of other notices or processes issued under this Act, and the manner in which service may be proved ;

¹See foot-note 3 on p. 393, *ante*.

(Part V.—Rules.—Part VI.—Supplemental Provisions.—Secs. 40, 41.)

- (e) the signing and verification of petitions, under section 9, denying liability ;
- (f) the transfer of such petitions to other officers for disposal ;
- (g) the scale of charges to be recovered under section 16, clause (c) ;
- (h) the maintenance and custody, while under attachment, of live-stock and other movable property, the fees to be charged for such maintenance and custody, the sale of such live-stock and property, and the disposal of the proceeds of such sale ;
- (i) the registers, books and accounts to be kept by Certificate-officers, and the inspection thereof by the public ;
- (j) the fee to be charged for the inspection of the register of certificates maintained under rule 59 in Schedule II ;
- (k) the recovery of expenditure on the certificate establishment by the levy of costs under section 16, clause (b) and section 45 ;
- (l) the recovery of poundage fees ;
- (m) the forms to be used under this Act.

Publication and effect of rules made under section 39.

40. (1) Rules made and sanctioned under section 39 shall be published in the ¹[*Official Gazette*], and shall, from the date of publication or from such other date as may be specified, have the same force and effect as if they had been contained in Schedule II.

(2) All references in this Act to the said Schedule II shall be construed as referring to that schedule as for the time being amended by such rules.

PART VI.

Supplemental Provisions.

Persons under disability.

41. Where the Certificate-officer is satisfied that the certificate-debtor is a minor or of unsound mind, he shall, in any proceeding under this Act, permit him to be represented by any suitable person.

¹See foot-note 4 on p. 393, *ante*.

of 1913.]

(Part VI.—Supplemental Provisions.—Secs. 42-47.)

42. No certificate shall cease to be in force by reason of— Continuance of certificates.

- (a) the property to which the demand relates ceasing to be under the charge or management of the Court of Wards or the Revenue-authorities ; or
- (b) the death of the certificate-holder.

43. Where a certificate-debtor dies before the certificate has been fully satisfied, the Certificate-officer may, after serving upon the legal representative of the deceased a notice in the prescribed form, proceed to execute the certificate against such legal representative ; and the provisions of this Act shall apply as if such legal representative were the certificate-debtor and as if such notice were a notice under section 7 : Procedure on death of certificate-debtor.

Provided that where the certificate is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of ; and, for the purpose of ascertaining such liability, the Certificate-officer executing the certificate may, of his own motion or on the application of the certificate-holder, compel such legal representative to produce such accounts as the Certificate-officer thinks fit.

44. (1) The Certificate-officer shall cancel any certificate at the request of the certificate-holder. Cancellation of certificates.

(2) The Certificate-officer may cancel any certificate filed under section 6 if the certificate-holder is not reasonably diligent.

45. Subject to such limitation as may be prescribed, the award of and cost of and incidental to any proceeding under this Act shall be in the discretion of the officer presiding, and he shall have full power to direct by whom and to what extent such costs shall be paid. Costs.

46. If the Certificate-officer is satisfied that any requisition under section 5 was made without reasonable cause, he may award to the certificate-debtor such compensation as the Certificate-officer thinks fit ; Compensation.

and the amount so awarded shall be recoverable from the certificate-holder under the procedure provided by this Act for recovery of costs.

47. (1) No person executing any warrant of arrest issued under this Act, or any process issued under this Act directing or authorizing the attachment of movable property, shall enter any dwelling house after sunset or before sunrise. Entry into dwelling-house.

(Part VI.—Supplemental Provisions.—Secs. 48-51.)

(2) No outer door of a dwelling-house shall be broken open unless the dwelling-house or a portion thereof is in the occupancy of the certificate-debtor and he or any other occupant of the house refuses or in any way prevents access thereto ; but, when the person executing any such warrant or other process has duly gained access to any dwelling-house, he may break open the door of any room and enter, if he has reason to believe that entering into the room is necessary in order to enable him to execute the process.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw ; and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of executing the process ; and, if the process be for the attachment of property, he may at the same time use every precaution, consistent with this section, to prevent its clandestine removal.

Application
of Act XVIII
of 1850.

48. Every Collector, Certificate-officer, Assistant Collector or Deputy Collector acting under this Act, and every [officer of the Crown] making a requisition under section 5, shall, in the discharge of his functions under this Act, be deemed to be acting judicially within the meaning of the Judicial Officers' Protection Act, 1850.

XVIII of
1850.

Officers to have
powers of Civil
Court for certain
purposes.

49. Every Collector, Certificate-officer, Assistant Collector or Deputy Collector acting under this Act, shall have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

Control over
officers.

50. All Certificate-officers (not being Collectors), Assistant Collectors and Deputy Collectors shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Collector.

Appeal.

51. (1) An appeal from any original order made under this Act shall lie—

(a) if the order was made by an Assistant Collector or a Deputy Collector, or by a Certificate-officer not being the Collector,—to the Collector, or

(b) if the order was made by the Collector,—to the Commissioner :

Provided that no appeal shall lie from any order made under section 22.

¹These words were substituted for the words "Government Officer" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1913.]

(Part VI.—Supplemental Provisions.—Secs. 52-56.)

(2) Every such appeal must be presented, in case (a), within fifteen days, or, in case (b), within thirty days, from the date of the order.

(3) The Collector may, by order, with the previous sanction of the Commissioners, authorize—

(i) any Subdivisional Officer, or

(ii) any officer appointed under clause (3) of section 3 to perform the functions of a Certificate-officer, to exercise the appellate powers of the Collector under sub-section (1).

(4) When any officer has been so authorized, the Collector may transfer to him for hearing any appeal referred to in clause (a) of sub-section (1), unless the order appealed against was made by such officer.

(5) Pending the decision of any appeal, execution may be stayed if the appellate authority so directs, but not otherwise.

52. No appeal shall lie from any order of a Collector, or an officer authorized under section 51, sub-section (3), when passed on appeal. Bar to second appeals.

53. The Collector may revise any order passed by a Certificate-officer, Assistant Collector or Deputy Collector under this Act; Revision.

the Commissioner may revise any order passed by a Collector under this Act;

and the Board of Revenue may revise any order passed by a Commissioner under this Act.

54. Any order passed under this Act may, after notice to all persons interested, be reviewed by the officer who made the order, or by his successor in office, on account of mistake or error either in the making of the certificate or in the course of any proceeding under this Act. Review.

55. The powers given by this Act shall be deemed to be in addition to, and not in derogation from, any powers conferred by any other Act now in force for the recovery of any due, debt or demand to which the provisions of this Act are applicable; and, except where expressly so provided, no legal remedy shall be affected by this Act. Saving of other Acts.

IX of 1908.

56. (1) Sections 6 to 9 of the Indian Limitation Act, 1908, shall not apply to suits, appeals or applications under this Act. Application of the Indian Limitation Act, 1908.

(2) Except as declared in sub-section (1), the provisions of the Indian Limitation Act, 1908, shall apply to all proceedings under this Act as if a certificate filed hereunder were a decree of a Civil Court.

(Part VI.—Supplemental Provisions.—
Secs. 57-64—Schedule I.)

Certificate-officer
deemed to be
a Court.

57. A Certificate-officer shall be deemed to be a Court, and any proceeding before him shall be deemed to be a civil proceeding within the meaning of section 14 of the Indian Limitation Act, 1908.

IX of 1908.

Penalties.

58. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein, from being taken in execution of a certificate, shall be deemed to have committed an offence punishable under section 206 of the Indian Penal Code.

Act XLV
of 1860.

Signature of
documents by
ministerial
officers.

59. (1) Any Certificate-officer may, by written order, authorize any ministerial officer to sign, on behalf of the Certificate-officer, any copy, issued by the Certificate-officer under this Act, of any document referred to therein.

(2) The ¹[Provincial Government] may, by notification in the ²*Official Gazette*, empower Certificate-officers to authorize ministerial officers, by written order, to sign on behalf of Certificate-officers any classes of original notices, summonses or proclamations issued by Certificate-officers under this Act which are specified in such notification.

60 to 64. [Amendments incorporated in Act VIII of 1885.]

SCHEDULE I.

Public Demands.

[See sections 3(6) and 34(b).]

1. Any arrear of revenue which remains due in the following circumstances, namely :—

when, under the provisions of the Bengal Land-revenue Sales Act, 1859, or the Bengal Land-revenue Sales Act, 1868, or any other law for the time being in force, an estate or tenure, or any share of an estate or tenure, has been sold for the recovery of arrears of revenue due thereupon, and, after deducting the expenses of such sale, the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may, under the said provisions, be applied.

XI of 1859,
Ben. Act
VII of
1868.

2. Any arrear of revenue which is due from a farmer on account of an estate held by him in farm, and is not paid on the latest day of payment fixed under section 3 of the said Bengal Land-revenue Sales Act, 1859.

¹See foot-note 3 on p. 393, *ante*.

²See foot-note 4 on p. 393, *ante*.

of 1913.]

(Schedule I.)

3. Any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process authorized for the recovery of arrears of revenue or of the public revenue or of Government revenue.

4. Any money which is declared by any enactment for the time being in force—

(i) to be a demand or a public demand, or

(ii) to be recoverable as arrears of a demand or public demand, or as a demand or public demand, or

(iii) to be recoverable under the Bengal Land-revenue Sales Act, 1868.

Ben. Act
VII
of 1868.

5. Any money due from the sureties of a farmer in respect of the revenue of the estate farmed by him.

6. Any money awarded as fees or costs by a Revenue-authority under any law or any rule having the force of law.

7. Any demand payable to the Collector by a person holding any interest in land, pasturage, forest-rights, fisheries or the like, whether such interest is or is not transferable, when such demand is a condition of the use and enjoyment of such land, pasturage, forest-rights, fisheries or other thing.

8. In the case of property which, under the provisions of any law for the time being in force, is under the charge of, or is managed by, the Court of Wards or the Revenue-authorities on behalf of a private individual—any arrear of rent, or of any demand which is recoverable as rent, whether such arrear became due before or after the management devolved upon such Court or such Authorities.

9. Any money payable to ²[an officer of the Crown] or any local authority, in respect of which the person liable to pay the same has agreed, by a written instrument, duly registered, that it shall be recoverable as a public demand.

10. Any stamp duty payable by a proprietor in respect of a paper of partition prepared under the Estates Partition Act, 1897.

Ben. Act V
of 1897.

¹In trust estates managed by Government, as express trustee, and in attached estates managed by Revenue authorities on behalf of private individuals, arrears of rent are recoverable under Article 8. The Act does not apply to rents of houses and shops, and the Certificate procedure cannot be applied to the Recovery of such rents unless, by a written instrument duly registered, the persons liable to pay such rents have agreed that they shall be recoverable as public demand.

²These words were substituted for the words "a Government Officer" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act III]

(Schedules I and II.)

11. In the case of a person to whom the collection of tolls has been framed under section 8 of the Canals Act, 1864, or of the sureties of such person—any money due in respect of such farm. Ben. Act V of 1864.

12. Any money awarded as compensation under section 2 of the Bengal Land-revenue Sales Act, 1868.

Ben. Act VII of 1868.

¹12-A. Any sum ordered by a liquidator appointed under sub-section (1) of section 42 of the Co-operative Societies Act, 1912, to be recovered as a contribution to the assets of a society or as the cost of liquidation. II of 1912.

²12-B. Any sum due to a land mortgage bank registered under the Co-operative Societies Act, 1912, or any sum due to an assignee of such bank in respect of any principal sum or any interest thereon under a mortgage made to the bank. II of 1912.

13. Any money due from a purchaser at a sale held in execution of a certificate under this Act, whether the sale is subsisting or not.

³SCHEDULE II.

RULES.

(See section 38.)

Signature and Verification of Requisitions for Certificates.

Signature and verification of requisition for certificate.

1. (1) Every requisition made under section 5 shall be signed and verified at the foot by the person making it.

(2) The verification shall state that the person signing the requisition has been satisfied by inquiry that the amount stated in the requisition is actually due.

(3) The verification shall be signed by the person making it and shall state the date on which it is signed.

¹Art. 12-A was inserted by s. 3 of the Bengal Public Demands Recovery (Amendment) Act, 1918 (Ben. Act I of 1918).

²Art. 12-B was inserted by s. 3 of the Bengal Public Demands Recovery (Amendment) Act, 1938 (Ben. Act V of 1938).

³This Schedule II has been substituted for the original Schedule II by Board of Revenue Notification No. 3948C.-P., dated the 21st December 1914, published in the *Calcutta Gazette*, dated the 23rd *idem*, Pt. I, p. 2351. Section 39, read with s. 40 of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), authorises the Board of Revenue to alter, to add to or to annul, by notification, any of the rules including the forms thereunder, in Schedule II to this Act. The Schedule has been amended in accordance with the several notifications and orders which have been issued under these powers up to the 31st December 1938.

of 1913.]

(Schedule II.)

Service of Notices.

2. Service of a notice issued under section 7, or under any other provision of this Act, shall be made by delivering or tendering a copy thereof, signed by the Certificate-officer or such ministerial officer as he authorizes in this behalf, and sealed with the seal of the Certificate-officer.

Mode of service.

3. Wherever it is practicable, service shall be made on the certificate-debtor in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on certificate-debtor or his agent.

4. Where the certificate-debtor cannot be found, and has no agent empowered to accept service of the notice on his behalf, service may be made on any adult male member of the family of the certificate-debtor who is residing with him.

Service on adult male member of certificate-debtor's family.

Explanation.—A servant is not a member of the family within the meaning of this rule.

5. Where the serving officer delivers or tenders a copy of the notice to the certificate-debtor personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original notice.

Person served to sign acknowledgment.

6. Where the certificate-debtor or his agent, or such other person as aforesaid, refuses to sign the acknowledgment or where the serving officer, after using all due and reasonable diligence, cannot find the certificate-debtor, and there is no agent empowered to accept service of the notice on his behalf, nor any other person on whom service can be made, the serving officer shall—

Procedure where certificate-debtor refuses to accept service or cannot be found.

- (a) affix a copy of the notice on the outer door or some other conspicuous part of the house in which the certificate-debtor ordinarily resides or carries on business or personally works for gain, or
- (b) if there be land affected by the notice, affix a copy of the notice on some conspicuous place in the office of the Certificate-officer and also on some conspicuous part of the land,

and shall then return the original to the Certificate-officer by whom it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house or land was identified and in whose presence the copy was affixed.

(Schedule II.)

Endorsement of time and manner of service.

7. The serving officer shall, in all cases in which the notice has been served under rule 5, endorse or annex, or cause to be endorsed or annexed, on or to the original notice, a return stating the time when and the manner in which the notice was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the notice.

Examination of serving officer.

8. Where a notice is returned under rule 6, the Certificate-officer shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Certificate-officer, or, subject to any general order of the Collector, by an Assistant Collector, Deputy Collector or Sub-Deputy Collector, touching his proceedings, and may make such further inquiry in the matter as he thinks fit; and shall either declare that the notice has been duly served or order such service as he thinks fit.

Service by post.

9. Notwithstanding anything hereinbefore contained, the notice may, if the Certificate-officer so directs, be served by post.

Petitions under Section 9, Denying Liability.

Signature and verification of petition denying liability.

10. (1) Every petition filed under section 9, denying liability, shall be signed and verified at the foot by the certificate-debtor or by some other person on his behalf who is proved to the satisfaction of the Certificate-officer to be acquainted with the facts of the case.

(2) The verification shall be signed by the person making it, and shall state the date on which it is signed.

(3) The petition referred to in sub-clause (1) above shall be filed in duplicate so that one copy may be supplied to the Certificate-holder.

Transfer of such petitions.

11. (1) The Certificate-officer may, subject to any general or special order of the Collector, transfer to any Assistant Collector or Deputy Collector subordinate to the Collector any petition filed under section 9; and such Assistant Collector or Deputy Collector shall hear and determine such petition accordingly:

Provided that the Collector may re-transfer any petition so transferred, and order that it be heard and determined by the Certificate-officer.

of 1913.]

(Schedule II.)

(2) The provisions of section 10 shall be applicable to any Assistant Collector or Deputy Collector to whom any such petition has been transferred under sub-rule (1).

Execution of Certificates.

12. Where a copy of a certificate is sent for execution to any other Certificate-officer under section 12, sub-section (1), the certificate may be executed by him.

Execution in another district.

Attachment of Movable Property, etc.

13. At the time of making an application for the attachment of movable property in the possession of the certificate-debtor, the certificate-holder shall declare whether the property is above or below Rs. 40 in value. If the property is declared to be above Rs. 40 in value, the certificate-holder shall pay the costs of issuing the proclamation of sale. If, however, the value of the property, having been declared to be Rs. 40 or under, should be found, as determined by rule 14 to exceed Rs. 40, the certificate-holder shall pay the costs of issuing the proclamation of sale immediately on receipt of notice of attachment.

Application for attachment of movable property in the possession of the certificate-debtor.

14. When the attaching officer believes that the property attached does not exceed Rs. 40 in value, he shall inform the debtor or, in his absence, any present adult member of his family, that it will be sold by public auction at once without the issue of any proclamation. In case the certificate-holder or the certificate-debtor, or any person on his behalf, objects to this, the attaching officer shall convoke a *panchayat* of not less than three respectable adult male inhabitants of the neighbourhood, of whom ordinarily the headman of the village should be one, and shall require them to assess the value of the property. If they determine that it exceeds Rs. 40 in value, he shall deal with it according to the rules for the sale of movable property exceeding Rs. 40 in value, otherwise he shall forthwith proceed to sell it by auction after giving such reasonable notice as the circumstances of the case admit of to intending purchasers.

Procedure for the attachment of movable property when its value is up to Rs. 40 or above.

15. Where the property to be attached is movable property (other than agricultural produce) in the possession of the certificate-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof :

Attachment of movable property (other than agricultural produce) in possession of certificate-debtor.

(Schedule II.)

Provided that, when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Attachment of
agricultural
produce.

16. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—

- (a) where such produce is a growing crop—on the land on which such crop has grown, or
- (b) where such produce has been cut or gathered—on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the certificate-debtor ordinarily resides, or, with the leave of the Certificate-officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain ;

and the produce shall thereupon be deemed to have passed into the possession of the Certificate-officer.

Provisions as to
agricultural pro-
duce under
attachment.

17. (1) Where agricultural produce is attached, the Certificate-officer shall make such arrangements for the custody thereof as he may deem sufficient, and for the purpose of enabling the Certificate-officer to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered and the applicant shall deposit in Court such sum as the Court shall require in order to defray the cost of watching or tending the crop till such time.

(2) Subject to such conditions as may be imposed by the Certificate-officer in this behalf, either in the order of attachment or in any subsequent order, the certificate debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it ; and, if the certificate-debtor fails to do all or any of such acts, the certificate-holder may, with the permission of the Certificate-officer and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the certificate-holder shall be recoverable from the certificate-debtor as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

of 1913.]

(Schedule II.)

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Certificate-officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

18. (1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a Corporation, or
- (c) other movable property not in the possession of the certificate-debtor, except property deposited in, or in the custody of, any Court,

Attachment of debt, share and other movable property not in possession of certificate-debtor.

the attachment shall be made by a written order prohibiting,—

- (i) in the case of the debt—the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Certificate-officer;
- (ii) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
- (iii) in the case of the other movable property (except as aforesaid)—the person in possession of the same from giving it over to the certificate-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Certificate-officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Certificate-officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

(4) Before making under sub-rule (1) an order of attachment of rents due to the Certificate-debtor from any subordinate tenure-holders or any *raiyat* or any under-*raiyat*, the Certificate Officer may, upon the application of the Certificate holder, issue notice on the Certificate-debtor calling

(Schedule II.)

upon him to submit a statement signed and verified in the manner specified in rule 1 containing the names of the tenants from whom rent is due to him and the amount of rent due to him from each such tenant within fifteen days from the date of receipt of the notice and the Certificate-officer shall make the order of attachment under sub-rule (1) after considering the said statement. Where the Certificate-debtor in spite of such notice fails to furnish such statement within the time mentioned in the sub-rule the Certificate officer shall issue the order of attachment under sub-rule (1) on such subordinate tenure-holders, *raiya*s or under-*raiya*s as are named in the application for an order of attachment under that sub-rule.

Rules regarding
realisation of
rents due to
Certificate-debtor
from the holders
of subordinate
interests
"Garnishee
Rules."

18A. (1) Rents due to a Certificate-debtor from subordinate tenure-holders or *raiya*s or under-*raiya*s which have been attached under rule 18 may be dealt with under the eight succeeding rules.

(2) The word "Garnishee" in these rules means and includes such subordinate tenure-holders, *raiya*s and under-*raiya*s.

Certificate-
officer to *issue*
notice to the
garnishee liable
to pay rent.

18B. (1) Upon the application of the certificate-holder, the Certificate in-officer may issue a notice to the garnishee liable to pay the rent calling on him either to pay to the Certificate-officer the rent due from him to the certificate-debtor or so much thereof as may be sufficient to satisfy the certificate and costs of execution, or to appear and show cause on a date to be specified in the notice why he should not do so.

(2) Notwithstanding anything else in these rules notice under sub-rule (1) may be issued simultaneously with an order under rule 18 (1).

(3) Such application shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the garnishee is indebted to the Certificate-debtor.

Certificate
officer to order
the garnishee
to comply with
the terms of
notice.

18C. Where the garnishee does not forthwith pay to the Certificate officer the amount due from him to the Certificate-debtor or so much thereof as is sufficient to satisfy the certificate and the costs of execution or does not appear and show cause in answer to the notice, the Certificate officer may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a certificate against him other than one for arrears of rent.

of 1913.]

(Schedule II.)

18D. (1) Where the garnishee disputes liability in part only, the Certificate-officer may amend the notice in accordance with the amount admitted, and unless the amount as amended is forthwith paid to the Certificate-officer, may make an order under rule 18C. Certificate-officer to amend notice where the garnishee disputes liability.

(2) Notwithstanding anything in sub-clause (1) where the garnishee disputes the liability in whole or in part and where the Certificate-officer thinks fit to make a determination as to the whole or part liability disputed by the garnishee, the Certificate-officer shall proceed to investigate the dispute, take evidence (if necessary) and determine whether the garnishee is liable for the whole or any part of the amount for which the notice was issued and may set aside, modify or vary the notice accordingly, and unless the amount of the notice so amended is paid forthwith shall make an order under rule 18C.

18E. The provisions of rule 43 shall apply to an order made under rule 18C. Rule 43 to apply to an order made under rule 18C.

18F. Where it is suggested or appears to be probable that a third person has a claim to or other interest in the amount, the Certificate-officer may order such third person to appear and state the nature and particulars of his claim (if any) to such amount and prove the same. Certificate-officer to order a third person to state the particulars of his claim, if any.

18G. After hearing such third person and any other person or persons who may subsequently be ordered to appear, or when such third person or other person or persons do not appear when so ordered, the Certificate-officer may proceed as prescribed in rule 18D. Certificate-officer to proceed under rule 18D in case the third person does not appear.

18H. Payment made by the garnishee on a notice under rule 18B or under an order under rule 18C shall be valid discharge to him as against the Certificate-debtor and any other person ordered to appear as aforesaid for the amount paid or levied though such certificate may be set aside or reversed. Payment under rule 18B or rule 18C.

18I. The costs of any application made under rule 18B and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Certificate-officer. Costs.

19. Where the property to be attached consists of the share or interest of the certificate-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the certificate-debtor prohibiting him from transferring the share or interest or charging it in any way. Attachment of share in movables.

(Schedule II.)

Attachment of salary or allowances of public officer or servant of Railway Company or Local Authority.

20. (1) Where the property to be attached is the salary or allowances of a public officer or of a servant of a Railway Company or Local Authority, the Certificate-officer, whether the Certificate-debtor or the disbursing officer is or is not within the local limits of the Certificate-officer's jurisdiction, may order that the amount shall be withheld from such salary or allowances, either in one payment or by monthly instalments as the Certificate-officer may direct; and, upon notice of the order to such officer as the ¹[Provincial Government] may, by notification in the ²[*Official Gazette*], appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Certificate-officer the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Certificate-officer or to a Civil Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the ¹[Provincial Government] in this behalf shall forthwith return the subsequent order to the Certificate-officer issuing it, with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the Government or the Railway Company or Local Authority, as the case may be; and the Government or the Railway Company or Local Authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

Attachment of negotiable instruments.

21. Where the property is a negotiable instrument not deposited in a Court nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought before the Certificate-officer and held subject to his orders.

Attachment of property in custody of Court or public officer.

22. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Certificate-officer by whom the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the certificate-holder and any other person, not being the certificate-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

¹See foot-note 3 on p. 393, *ante*.

²See foot-note 4 on p. 393, *ante*.

of 1913.]

(Schedule II.)

23. Where the property is immovable, no attachment need be made before sale. Attachment of immovable property.

24. Where

(a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to a sale, are paid to the Certificate-officer, or Removal of attachment on satisfaction or cancellation of certificate.

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the certificate-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by rule 47, sub-rule (1).

Maintenance and custody, while under attachment, of live-stock and other movable property.

25. Under rule 15, the property seized will remain in the custody of the attaching officer or of one of his subordinates on his responsibility. Custody of property under attachment.

26. If no suitable place can be found in the village for the safe custody of the attached property, the attaching officer shall remove the property to the Court at the certificate-holder's expense. In the event of the certificate-holder failing to provide the necessary funds, the attachment shall be withdrawn. Removal of property to Court.

27. Whenever attached property is kept at the place where it is attached, the officer shall forthwith report the fact to the Certificate-officer, and with his report shall forward an accurate list of the property seized, so that the Certificate-officer may thereon at once issue the proclamation of sale. List of property under attachment.

28. If the debtor shall give his consent in writing to the sale of the property without awaiting the expiry of the prescribed term, the officer shall receive the same and forward it without delay to the Certificate-officer for orders. Debtor's consent to the sale of the property under attachment.

29. When property is removed to the Court it shall be kept by the *nazir* on his own sole responsibility in such place as may be approved by the Certificate-officer. If the property cannot, from its nature or bulk, be conveniently kept in the Court premises, or in the personal custody of the *nazir*, he may, subject to approval by the Certificate-officer, make such arrangements for its safe custody under his own supervision as may be most convenient and economical and the Certificate-officer may fix the remuneration to be allowed to the persons, not being officers of the Court, in whose custody the property is kept. Custody of property under attachment, while in Court.

(Schedule II.)

Claim of any person other than the certificate-holder to the property under attachment.

30. When property remains at the place where it is attached in the custody of the attaching officer, and any person other than the certificate-debtor shall claim the same, or any part of it, the officer shall nevertheless, unless the certificate-holder desires to withdraw the attachment of the property so claimed, remain in possession, and shall direct the claimant to prefer his claim to the Certificate-officer.

Withdrawal of attachment.

31. If the certificate-holder shall withdraw an attachment, or if it be withdrawn under rule 26 or rule 33, the attaching officer shall inform the debtor, or in his absence, an adult member of his family, that the property is at his disposal.

In the absence of any person to take charge of it, or in case the officer shall have had notice of claim by a person other than the certificate-debtor, the officer shall, if the property has been moved from the premises in which it was seized, replace it where it was found at the time of seizure.

Feeding and tending of live-stock under attachment.

32. Whenever live-stock is kept at the place where it has been attached, the certificate-debtor shall be at liberty to undertake the due feeding and tending of it, under the supervision of the attaching officer; but the latter shall, if required by the certificate-holder, and on his paying for the same, at a rate to be fixed by the Certificate-officer, engage the services of as many persons as may be necessary for the safe custody of it.

Cost for feeding live-stock and expenses attending its removal to Court.

33. In the event of the certificate-debtor failing to feed attached live-stock, the officer shall call upon the certificate-holder either to pay for feeding it on the spot, or for the expenses attending its removal to the Court. If the certificate-holder shall fail to provide for either, the officer shall report the matter, without delay, to the Certificate-officer who may thereupon withdraw the attachment.

Responsibility of the *nazir* for safe custody and proper feeding.

34. When attached live-stock is brought to Court, the *nazir* shall be responsible for the safe custody and proper feeding of it so long as the attachment continues.

Custody of live-stock in Government pounds.

35. If there be a Government pound in or near the place where the Court is held, the *Nazir* shall be at liberty to place in it such attached live-stock as can be properly kept there in which case the pound-keeper will be responsible for the

of 1913.]

(Schedule II.)

property to the *nazir*, and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description.

36. If there be no pound available, or if, in the opinion of the Certificate-officer, it be inconvenient to lodge the attached live-stock in the pound, the *nazir* may keep it in his own premises, or he may entrust it to any person selected by himself and approved by the Certificate-officer. The *nazir* will in all cases remain responsible for the custody of the property.

Responsibility of the *nazir* for the custody of live-stock.

37. The Certificate-officer shall, from time to time, fix the rates to be allowed for the custody and maintenance of the various descriptions of live-stock with reference to seasons and local circumstances. The Collector may make any alterations he deems fit in the rates so prescribed.

Rates to be allowed for the custody and maintenance of various descriptions of live-stock.

38. (1) Where process of attachment of movable property by actual seizure is issued, fees at the following rates shall be charged, and the officer deputed to attach such property shall be furnished with a certificate stating the period for which the fees in accordance with this rule have been paid.

Fees to be charged where process of attachment of movable property is by actual seizure.

- (i) When the amount or value of the subject matter of the case exceeds Rs. 1,000—

Rs. a. p.

- (a) for the seizure under the order of attachment 2 0 0
- (b) for each man necessary to ensure safe custody of property so attached, when such man is actually in possession, *per diem* 0 6 0

- (ii) When the amount or value of the subject matter of the case is Rs. 1,000 or under, but above Rs. 50—

Rs. a. p.

- (a) for the seizure under the order of attachment 1 0 0
- (b) for each man necessary to ensure the safe custody of property so attached, when such man is actually in possession, *per diem* 0 4 0

Schedule II.)

(iii) When the amount or value of the subject matter of the case is Rs. 50 or under—

Rs. a. p.

(a) For the seizure under the order of attachment	0	8	0
(b) for each man necessary to ensure the safe custody of property so attached, when such man is actually in possession, <i>per diem</i>	0	4	0

NOTE (1).—When any process of attachment of movable property by actual seizure is issued, as a result of action taken under sections 13 and 14 of the Act, only the special fees leviable under the above rule should be charged. At this stage, the fee of annas twelve for an ordinary executive revenue process, as prescribed in rule 166(a), page 18 of the Bengal Practice and Procedure Manual, 1934, which is added to the certificate demand at the preliminary stage when notice under section 7 of the Act is issued, should not be imposed again.

NOTE (2).—When a process of attachment of movable property by actual seizure is re-issued after a partially or wholly unsuccessful attempt to realise certificate dues, the fees as laid down in the above rule should be levied afresh, except in cases where the re-issue is due to any mistake or fault on the part of the Nazarat staff.

NOTE (3).—The phrase “amount or value of the subject-matter of the case” means the original demand as in the certificate signed under section 4 or 6 subject to any modification subsequently made under section 10.

NOTE (3a).—In addition to the fees leviable under the above rule, the boat hire prescribed in rule 166(c), page 18 of the Practice and Procedure Manual, 1934, should be charged.

(2) When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (a) referred to above must be paid in each case, and the daily fee (b) only for the men actually employed. The daily fee (b) is to be paid at the time of obtaining the process for so many days as the Certificate-officer shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the attaching officer; but where that officer is not to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer going, effecting the attachment and returning. When the inventory filed by the certificate-holder shows the property to be of such small value, that the expense of keeping it in custody may probably exceed the value, the Certificate-officer shall fix the daily fee with reference to the provisions of rule 15:

Provided that, if it appears that for any reason the number of days fixed by the Certificate-officer under this rule, and in respect of which fees have been paid, is likely to be exceeded and the certificate-holder desires to maintain the attachment, the certificate-holder shall apply to the Certificate-officer to fix such further number of days as may be necessary and the additional fees in respect thereof shall be paid in the manner

of 1913.]

(Schedule II.)

provided in sub-rule (3). If such additional fees be not paid within the period originally fixed and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

(3) Where process of warrant of arrest is issued in certificate cases, the fees at the following rates shall be charged : — Fees for issue of process of warrant of arrest.

- (i) Rupee 1 when the amount under certificate is Rs. 50 or under.
- (ii) Rupees 4 when the amount under certificate is Rs. 1,000 or under but above Rs. 50.
- (iii) Rupees 10 when the amount under certificate exceeds Rs. 1,000.

NOTE (4).—When a warrant of arrest is re-issued after a partially or wholly unsuccessful attempt to realise the certificate dues, the fees as laid down in the above rule should be levied afresh, except in cases where the re-issue is due to any mistake or fault on the part of the Nazarat staff.

NOTE (5). In addition to the fees leviable under the above rule the boat hire prescribed in rule 166(c), page 18 of the Practice and Procedure Manual, 1934, should be charged.

(4) The fees prescribed by this rule shall be payable in advance at the time of when the petition for service or execution is presented, and shall be paid by means of court-fee stamps affixed to the petition in addition to the stamps necessary for its own validity.

38A. All refund cases of custody fees will be entered in Register 8 and the Certificate-officer shall be asked to report whether the claim is admissible. If his report shows that the refund may be granted, the Collector will authorise him to issue a payment order on the back of the paper to which the court-fee stamps are affixed. The refund will be adjustable under the head "VII—Stamps—Deduct Refunds". Refund of custody fees.

Investigation of Claims and Objections.

39. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Certificate-officer shall proceed to investigate the claim or objection : Investigation by Certificate officer.

Provided that no such investigation shall be made where the Certificate-officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Certificate-officer ordering the sale may postpone it pending the investigation of the claim or objection upon such terms as to security or otherwise as the Court shall deem fit.

(Schedule II.)

Evidence to be adduced.

40. The claimant or objector must adduce evidence to show that—

- (a) (in the case of immovable property) at the date of the service of the notice under section 7, or
- (b) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of, the property attached.

Release of property from attachment or sale.

41. Where, upon the said investigation, the Certificate-officer is satisfied that, for the reason stated in the claim or objection, such property was not,—

- (a) (in the case of immovable property) at the date of the service of the notice under section 7, or
- (b) (in the case of movable property) at the date of the attachment,

in the possession of the certificate-debtor or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the certificate-debtor at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person,

the Certificate-officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

Disallowance of claim to property attached.

42. Where the Certificate-officer is satisfied that the property was, at the said date, in the possession of the certificate-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Certificate-officer shall disallow the claim.

Saving of suits to establish right to attached property.

43. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a Civil Court to establish the right which he claims to the property in dispute ; but, subject to the result of such suit (if any), the order shall be conclusive.

Sale generally.

Power to order sale of attached property.

44. Any Certificate-officer executing a certificate may order that any property liable to sale, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

of 1913.]

(Schedule II.)

45. Sales of property under the proviso to rule 15 and of movable property not exceeding Rs. 40 in value, shall be held on the spot. Such sales will necessarily be conducted by peons when they are the attaching officers. Sales of movable property of greater value can, under rule 46, take place only after the issue of a proclamation, but they may be held on the spot or at the *sadar* or sub-divisional headquarters, as may seem convenient and conducive to the securing of good prices, provided that the place and time of sale are notified in the proclamation. For such sales officers of higher rank than peons should always be deputed when the value of the property is estimated to exceed Rs. 50 and proclamation should be issued. When the value is between Rs. 40 and Rs. 50, the Collector or Certificate-officer may, by a special order, depute a peon, if he considers it desirable to do so.

Sale of movable property falling under rule 15 or of value not exceeding Rs. 40 or of greater value.

46. (1) Where any immovable property, or any movable property exceeding forty rupees in value, is ordered to be sold by public auction, the Certificate-officer shall cause a proclamation of the intended sale to be made in the language of the Courts of the district.

Proclamation of sale by public auction.

(2) Such proclamation shall be drawn up after notice to the certificate-debtor, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,—

- (a) the property to be sold ;
- (b) (where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government) the revenue assessed upon the estate or part of the estate ;
- (c) the amount for the recovery of which the sale is ordered ; and
- (d) any other thing which the Certificate-officer considers it material for a purchaser to know in order to judge of the nature and value of the property.

(3) Where a tenure, or a *raiya* holding at fixed rates, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the tenure or holding will first be put up to auction subject to registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount specified in the certificate, and costs, and that otherwise it will, if the certificate-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances.

(Schedule II.)

(4) Where an occupancy holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the holding will be sold with power to annul all incumbrances. VIII of
1885.

(5) Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of sub-clauses (3) and (4) shall not apply.

(6) For the purpose of ascertaining the matters to be specified in the proclamation, the Certificate-officer may summon any person whom he thinks necessary to summon, and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

Mode of making
proclamation.

47. (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the office of the Certificate-officer.

(2) Where the Certificate-officer so directs, such proclamation shall also be published in the ¹*Official Gazette* or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

(3) If a tenure, a *raiyyati* holding at fixed rates or an occupancy holding situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the proclamation shall also be published in the *Malkachari* or rent office of the estate and at the local *thana*.

(4) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Certificate-officer, otherwise be given.

Time of sale.

48. Save in the case of property of the kind described in the proviso to rule 15, no sale hereunder shall, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days in the case of immovable property, or of at least fifteen days in the case of movable property exceeding forty rupees in value, calculated from the date on which a copy of a sale proclamation has been affixed in a conspicuous part of the office of the Certificate-officer :

¹See foot-note 4 on p. 393, *ante*.

of 1913.]

(Schedule 11.)

VIII of
1885.

Provided that if a tenure, a *raiyati* holding at fixed rates or an occupancy holding situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the sale shall not, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days, calculated from—

- (a) the date on which a copy of the sale proclamation has been affixed in a conspicuous part of the office of the Certificate-officer, or
- (b) the date on which the sale proclamation has been published in the *Malkachari* or rent office of the estate and at the local *thana*,

whichever is later.

49. (1) No holder of a certificate in execution of which property is sold shall, without the express permission of the Certificate-officer, bid for or purchase the property.

Purchase of
property by the
certificate-holder.

(2) Where a Certificate-holder purchases with such permission, the purchase-money and the amount due on the certificate may be set off against one another, and the Certificate-officer executing the certificate shall enter up satisfaction of the certificate in whole or in part accordingly.

(3) Where a certificate-holder purchases, by himself or through another person, without such permission, the Certificate-officer may, if he thinks fit, on the application of the certificate-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the certificate-holder.

(4) This rule shall not apply when the certificate-holder is the ¹[Central Government or the Provincial Government].

50. (1) The Certificate-officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Adjournment or
stoppage of sale.

Provided that, where the sale is made in, or within the precincts of, the office of the Certificate-officer, no such adjournment shall be made without the leave of the Certificate-officer.

¹These words were substituted for the words "Secretary of State for India in Council" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Schedule II.)

(2) Where a sale is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation under rule 47 shall be made unless the certificate-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid to the Certificate-officer who ordered the sale.

Defaulting
purchaser
answerable for
loss on re-sale.

51. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Certificate-officer by the officer or other person holding the sale, and shall, at the instance of either the certificate-holder or the certificate-debtor, be recoverable from the defaulting purchaser under the procedure provided by this Act. :

Provided that no such application shall be entertained unless made within 15 days from the date of re-sale.

Restriction on
bidding or
purchase by
officers.

52. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire, any interest in the property sold.

Levy of poundage
fees.

53. (1) The percentage or poundage fee on the gross amount realised by any sale under the Public Demands Recovery Act, 1913, shall be leviable on every such sale at the rate of 2 *per cent.* on such gross amount up to Rs. 1,000 and at the rate of 1 *per cent.* on all excess of gross amounts over Rs. 1,000.

(2) The percentage or poundage fee under sub-rule (1) shall be paid in court-fee-stamps by the auction-purchaser (certificate-holder or other person) as soon as his bid is accepted by the Court and the sale is completed.

(3) The percentage leviable under sub-rule (1) shall be calculated on multiples of Rs. 25, that is to say, a poundage fee of 8 annas should be levied for every Rs. 25, or part of Rs. 25, realized by the sale, up to Rs. 1,000, and in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of 4 annas for every Rs. 25 or part thereof should be levied.

(4) In case in which several properties are sold in satisfaction of one certificate, only one poundage fee calculated on the gross sale-proceeds should be levied, 2 *per cent.* being charged on the gross sale-proceeds up to Rs. 1,000 and 1 *per cent.* on such proceeds exceeding Rs. 1,000.

54. (Omitted.)

of 1913.]

(Schedule II.)

54A. If a certificate-holder files a claim before the Certificate-officer to receive any amount referred to in clause (c) of sub-section (1) of section 26, the Certificate-officer shall issue notice to the certificate-debtor, who may dispute the claim within thirty days from the service of the notice. If the Certificate-debtor disputes the claim, the Certificate-officer shall determine the dispute as required by sub-section (2) of section 26, and payment of the amount claimed will be made in accordance with such determination. If the Certificate-debtor does not dispute the claim, the amount claimed by the Certificate-holder shall be paid to him after the said period of thirty days in accordance with the provisions contained in clause (c) of sub-section (1) of the said section.

Time limit within which the certificate-debtor can dispute claim of certificate-holder to receive payment of the balance of the sale proceeds under section 26, clause (c).

Sale of movable property.

55. (1) Where the property to be sold is agricultural produce, the sale shall be held,—

Sale of agricultural produce.

- (a) if such produce is a growing crop—on or near the land on which such crop has grown, or
- (b) if such produce has been cut or gathered - at or near the threshing-floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited :

Provided that the Certificate-officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

- (a) a fair price, in the estimation of the person holding the sale, is not offered for it, and
- (b) the owner of the produce, or a person authorized to act in his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

55. (1) Where the property to be sold is a growing crop, and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

Special provisions relating to growing crops.

(Schedule II.)

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe state (e.g. as green wheat), it may be sold before it is cut and gathered; and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

Sale by public
auction.

57. (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be resold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the certificate-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Irregularity not
to vitiate sale,
but any person
injured may sue.

58. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a Civil Court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Delivery of
movable
property, debts
and shares.

59. (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the certificate-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a Corporation, the delivery thereof shall be made by a written order of the Certificate-officer prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Corporation from permitting any such transfer or making any such payment to any person except the purchaser.

of 1913.]

(Schedule II.)

60. (1) Where the execution of a document, or the endorsement of the party in whose name a negotiable instrument or a share in a Corporation is standing, is required to transfer such negotiable instrument or share, the Collector, or such officer as he may appoint in this behalf, may execute such document or make such endorsement as may be necessary and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

Transfer of negotiable instruments and shares.

(2) Such execution or endorsement may be in the following form, namely :—

A B, by C D, Collector of the district of _____, in a proceeding under the Bengal Public Demands Recovery Act, 1913, against A B.

(3) Until the transfer of such negotiable instrument or share, the Certificate-officer may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

61. In the case of any movable property not hereinbefore provided for, the Certificate-officer may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Vesting order in case of other property.

Sale of immovable property.

62. (1) When a tenure or a holding at fixed rates, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, has been advertised under rule 46 for sale in execution of a certificate for arrears of rent due in respect thereof, it shall be put up to auction subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the certificate and the costs of the sale, the tenure or holding shall be sold subject to such incumbrances.

Sale of tenure or holding at fixed rates, subject to registered and notified incumbrances.

(2) The purchaser at such sale may, in manner provided by section 167 of the Bengal Tenancy Act, 1885, and not otherwise, annul any incumbrance upon the tenure or holding, not being a registered and notified incumbrance.

63. (1) If the bidding for a tenure or a holding at fixed rates, put up to auction under rule 62, does not reach a sum sufficient to liquidate the amount of the certificate and costs as aforesaid, and if the certificate-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the person holding the sale shall adjourn the sale and make a fresh proclamation under rule 46 announcing

Sale of tenure or holding at fixed rates, with power to avoid all incumbrances.

(Schedule II.)

that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances, upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this rule may, in manner provided by section 167 of the Bengal Tenancy Act, 1885, and not otherwise, annul any incumbrance on the tenure or holding. VIII of 1885.

Sale of occupancy-holding, with power to avoid all incumbrances.

64. (1) When an occupancy-holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, has been advertised under rule 46 for sale in execution of a certificate for arrears of rent due in respect thereof, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this rule may, in manner provided by section 167 of the Bengal Tenancy Act, 1885, and not otherwise, annul any incumbrance on the holding.

Rules 62 to 64 not to apply in certain cases to certificate holders who are co-sharer landlords.

65. Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of rules 62, 63 and 64 shall not apply.

Postponement of sale to enable certificate-debtor to raise amount due under certificate.

66. (1) Where an order for the sale of immovable property has been made, if the certificate-debtor can satisfy the Certificate-officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the certificate-debtor, the Certificate-officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case the Certificate-officer shall grant a certificate to the certificate-debtor, authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 8 or section 18, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the certificate-debtor, but to the Certificate-officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Certificate-officer.

Prohibition of purchase of tenure or holding by certificate-debtor.

67. (1) When a tenure or holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is put up for sale in execution of a certificate for arrears of rent due in respect thereof, the certificate-debtor shall not bid for or purchase the tenure or holding.

of 1913.]

(Schedule II.)

(2) If a certificate-debtor purchases, by himself or through another person, a tenure or holding so sold, the Certificate-officer may, if he thinks fit, on the application of the certificate-holder or any other person interested in the sale, by order, set aside the sale; and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the certificate-debtor.

NOTE.—Rule 67(1) is binding on the certificate-debtor, but not on the Certificate-officer, who under rule 67(2) may, in his discretion, allow such bids and refuse subsequent applications to set aside a sale on such grounds.

68. On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five *per cent.* on the amount of his purchase-money, to the officer or other person conducting the sale; and, in default of such deposit, the property shall forthwith be re-sold.

Deposit by purchaser and re-sale in default.

69. The full amount of purchase-money payable shall be paid by the purchaser to the Certificate-officer on or before the fifteenth day from the sale of the property.

Time for payment of purchase-money in full.

70. In default of payment within the period mentioned in rule 69, the deposit may, if the Certificate-officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

Procedure in default of payment.

71. Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Fresh proclamation before re-sale.

72. Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Bid of co-sharer to have preference.

73. Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty (if any) referred to in clause (b) of section 22, and such interest as the Certificate-officer may allow, shall be paid to the purchaser.

Return of purchase-money in certain cases.

(Schedule II.)

Certificate to purchaser.

74. (1) Where a sale of immovable property has become absolute, the Certificate-officer shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall bear date the day on which the sale became absolute.

Delivery of property in occupancy of certificate-debtor.

75. Where the immovable property sold is in the occupancy of the certificate-debtor, or of some person on his behalf or of some person claiming under a title created by the certificate-debtor subsequently to the service of the notice issued under section 7, and a certificate in respect thereof has been granted under rule 74, the Certificate-officer shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person whom he may appoint to receive delivery on his behalf, in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of property in occupancy of tenant or other person.

76. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under rule 74, the Certificate-officer shall, on the application of the purchaser, order delivery to be made by affixing a copy of certificate, of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the certificate-debtor has been transferred to the purchaser.

Arrest and Detention.

Discretionary power to permit certificate-debtor to show cause against detention in prison.

77. (1) The Certificate-officer may, before issuing a warrant for the arrest of the certificate-debtor, issue a notice calling upon him to appear before the certificate-officer, on a day to be specified in the notice, and show cause why he should not be committed to the civil prison.

(2) Where appearance is not made in obedience to the notice, the Certificate-officer may issue a warrant for the arrest of the certificate-debtor.

Subsistence allowance.

78. (1) When a certificate has been signed either in accordance with the provisions of section 4, or on a requisition made under section 5, no certificate-debtor shall be arrested in execution of the certificate unless and until the certificate-holder pays into Court such sum as the Certificate-officer thinks sufficient for the subsistence of the certificate-debtor from the time of his arrest until he can be brought before the Certificate-officer.

of 1913.]

(Schedule II.)

(2) When a certificate-debtor is committed to the civil prison in execution of a certificate, the Certificate-officer shall fix for his subsistence such monthly allowance as he may be entitled to according to the scale fixed by the ¹[Provincial Government] for the subsistence of arrested judgment-debtors, or, where no such scale has been fixed, as the Certificate-officer considers sufficient with reference to the class to which the certificate-debtor belongs.

(3) The monthly allowance fixed by the Certificate-officer, shall be supplied, by the person upon whose requisition the certificate was signed, by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the Certificate-officer for such portion of the current month as remains unexpired before the certificate-debtor is committed to the civil prison : and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the certificate-holder for the subsistence of the certificate-debtor in the civil prison shall be deemed to be costs in the proceeding :

Provided that the certificate-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

Supplemental.

79 (1) Every Certificate-officer shall cause to be kept in his office a register of certificates filed in his office under this Act, and shall cause particulars of all such certificates to be entered in such register. Register of certificates.

(2) Such register shall be open during office hours, for not less than two hours daily, and at such time as may be fixed by the Collector, for inspection by any person who desires to inspect the same ; and a fee of one anna shall be chargeable for every such inspection.

NOTE.—The fee should be prepaid by Court-fee stamp affixed to the application.

80. (1) Payment of the amount due under any certificate may be made by instalments, if the Certificate-officer in whose office the certificate is filed so directs. Payment by instalments.

(2) The payment of every such instalment shall be entered in the register referred to in rule 79.

¹See foot-note 3 on p. 393, *ante*.

(Schedule II.)

Remittance to Certificate-officer of sums received under a certificate transferred for execution.

81. When a copy of a certificate has been sent to another officer under section 12, sub-section (1), all sums, except Government demands, received by such officer under such certificate shall be remitted by him to the Certificate-officer in whose office the original certificate is filed.

Entry of satisfaction.

82. When the whole or any portion of the amount due under a certificate has been realized, the Certificate-officer in whose office the original certificate is filed shall cause an entry of the fact to be made upon the certificate and in the register referred to in rule 79.

Communication of satisfaction to other persons.

83. When a copy of a certificate has been sent to another officer under section 12, sub-section (1),

or when a certificate has been signed upon a requisition, any satisfaction of the certificate, whether in whole or in part shall be certified to such officer, or to the sender of such requisition, as the case may be.

Exemption of requisitions from Liquidator of Co-operative Societies from *ad valorem* fee.

83A. Requisitions from a Liquidator of Co-operative Societies appointed under section 42(1) of the Co-operative Societies Act, 1912, countersigned by the Registrar of Co-operative Societies, under the proviso to section 5(1) of the Bengal Public Demands Recovery Act, 1913, should be treated as applications from a Government officer and should accordingly be exempt from *ad valorem* fee. II of 1912.

Procedure to be followed when one of two or more certificate-debtors is found to have died before the filing of the certificate.

83B. Where one of two or more certificate-debtors is found to have died before the certificate was filed under section 4 or section 6, the Certificate-officer may, at any stage of the proceedings and on such terms as he thinks fit, order that the name of the deceased be struck out and that the legal representative of the deceased be added as a certificate-debtor, and the certificate shall be amended accordingly.

(2) When a certificate is so amended, the Certificate-officer shall cause a notice and a copy of the amended certificate to be served, in accordance with the provisions of section 7, on the new certificate-debtor and, if the Certificate-officer thinks fit, on the other certificate-debtors.

(3) The certificate proceedings as against the new certificate-debtor shall be deemed to have begun only on the service of such notice and certificate on him.

Forms.

84. The forms set forth in the Appendix shall be used, with such variations as circumstances may require. **Forms in Appendix.**

¹Rule 83A was inserted by Board of Revenue Notification No. 236C.-P., dated the 13th January, 1920, published in the *Calcutta Gazette*, dated the 14th *idem*, Pt. I, p. 50 (see section 39, *ante*).

of 1913.]

(Schedule II.)

APPENDIX.**FORMS.**

(See rule 84.)

FORM No. 1.

(Bengal Form No. 1027.)

Certificate of Public Demand.

(See sections 4 and 6.)

Filed in the Office of the Certificate-officer of (name of District).

No. of certificate.	Name and address of certificate-holder.	Name and address of certificate-debtor.	Amount of public demand (including interest, if any, and including the fee paid under section 5, sub-section (2), if any) for which this certificate is signed, and period for which such demand is due.	Further particulars of the public demands for which this certificate is signed.
1	2	3	4	5

I hereby certify that the above-mentioned sum of Rs. _____ is due to the above named _____ from the above-named _____

[If the certificate is signed on requisition sent under section 5, add—]

I further certify that the above-mentioned sum of Rs. _____ is justly recoverable and that its recovery by suit is not barred by law.

Dated this _____ day of _____ 19 ____

A. B.,

Certificate-officer of _____

(Schedule II.)

FORM No. 2.

(Bengal Form No. 1028.)

Requisition for a Certificate.

(See section 5.)

To the Certificate-officer of the district of

Name of certificate-debtor.	Address of certificate-debtor.	Amount of public demand for which this requisition is made.	Nature of the public demand for which this requisition is made.
1	2	3	4

I request you to recover the above-mentioned sum of Rs. _____, which I am satisfied, after inquiry, is due from the said _____ in respect of _____.

Verified by me on the _____ day of _____ 19 ____.

A. B.,
(Designation).

FORM No. 3.

(Bengal Form No. 1029.)

Notice to Certificate-debtor.

(See section 7.)

To (name of Certificate-debtor).

You are hereby informed that a certificate against you for Rs. _____, due from you on account of _____, has this day been filed in my office, under section _____ of the Bengal Public Demands Recovery Act, 1913. If you deny your liability to pay the said sum of Rs. _____, you may, within thirty days from the service of this notice, file in my office a petition denying liability, in whole or in part. If, within the said thirty days, you fail to file such a petition, or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed it will be executed, under the provisions of the said Act, unless you pay Rs. _____ (Rs. _____ on account of the demand and Rs. _____ on account of costs of realization) into my office. Until the said amount is so paid, you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage, or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.

A copy of the Certificate above-mentioned is hereto annexed.

You may remit the amount by money-order, quoting the number and year of the certificate.

Dated this _____ day of _____, 19 ____.

A. B.,
Certificate-officer of

of 1913.]

(Schedule II.)

FORM No. 4.

(Bengal Form No. 1031.)

Petition denying Liability.

(See section 9.)

To

THE CERTIFICATE-OFFICER OF

The humble petition of (*name of petitioner*) of (*address*).

SHEWETH—

That a certificate No. of (*year*), for the sum of Rs. has been filed against your petitioner in your office under section of the Bengal Public Demands Recovery Act, 1913.

That your petitioner respectfully denies his liability to pay the said sum of Rs. (*or, where the liability to pay part is admitted, denies his liability to pay more than Rs.*), and this for the following reasons :—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said certificate may be set aside (*or modified or varied*).

A. B.,

(*Petitioner*).

FORM No. 5.

(Bengal Form No. 1032.)

Notice to show Cause why Sale should not be set aside.

[See proviso to section 25 (2).]

To

WHEREAS the undermentioned property was sold on the day of , 19 , in execution of certificate No. , dated the , 19 , and whereas , the certificate-holder [*or certificate-debtor*] has applied to me to set aside the sale of the said property on the ground that

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this office on the day of , 19 , when the said application will be heard and determined.

GIVEN under the seal of the Court, this day of , 19 .

Description of property.

Certificate-officer.

(Schedule II.)

FORM No. 6.**Summons to appear and answer charge of obstructing execution of Certificates.**

[See section 27 (2).]

Certificate No. of 19 .

To

WHEREAS , the certificate-holder in the above certificate, has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession ;

You are hereby summoned to appear in this Court on the day of 19 , at a.m., to answer the said complaint.

Given under the seal of the Court, this day of 19 .

Certificate-officer of .

FORM No. 7.

(Bengal Form No. 1045.)

Warrant of Committal.

(See section 28.)

To

THE OFFICER IN CHARGE OF THE CIVIL PRISON AT

WHEREAS the undermentioned property has been sold to No. , dated the purchaser at auction sale in execution of certificate case is satisfied that without any just cause resisted (or obstructed) and is still resisting (or obstructing) the said in obtaining possession of the property, and whereas the said has made application to this Court that the said be committed to the civil prison :

You are hereby commanded and required to take and receive the said into the civil prison and to keep him imprisoned therein for the period of days.

Given under the seal of the Court, this day of 19 .

Certificate-officer.

of 1913.]

(Schedule II.)

FORM No. 8.

(Bengal Form No. 1034.)

Warrant of Arrest.

(See section 29.)

To

WHEREAS a certificate No. _____ was filed in this office on the _____ 19, under section _____ of the Bengal Public Demands Recovery Act, 1913, against _____ Certificate-debtor, and the sum of Rs. _____, as noted below, is due from him in respect of the said certificate;

Rs. as. p.

Original demand	..	..	..	..
Interest	..	..	..	..
Costs	..	..	..	..
Execution	..	..	..	..
Total	..	..	..	..

and whereas the said sum of Rs. _____ has not been paid to the Certificate-holder in satisfaction of the said certificate; these are to command you to arrest the said certificate-debtor and, unless the said certificate-debtor shall pay to you the said sum of Rs. _____, together with Rs. _____ for the costs of executing this process, to bring him before the Court with all convenient speed.

You are further commanded to return this warrant on or before the _____ day of _____ 19, with an endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed.

Dated this _____ day of _____ 19 .

Certificate-Officer.

FORM No. 9.

(Bengal Form No. 1038.)

Order committing Certificate-debtor to the civil prison.

(See section 29.)

To

The Officer in charge of the Civil Prison at _____, who has been brought before me this _____ day of _____, 19, under a warrant in execution of certificate No. _____, filed in this office on the _____, 19, under section _____ of the Bengal Public Demands Recovery Act, 1913, and by which certificate it was ordered that the said _____ should pay _____; and whereas the said _____ has not paid the said sum nor satisfied me that he is entitled to be discharged from custody;

You are hereby, in the name of the King-Emperor of India, commanded and required to take and receive the said _____ into the Civil Prison and keep him imprisoned therein for a period not exceeding _____ or until the said certificate shall be fully satisfied, or the said _____ shall be otherwise entitled to be released according to the terms and provisions of section 31 or section 32 of the said Act; and I hereby fix _____ annas per diem as the rate of the monthly allowance for the subsistence of the said _____ during his confinement under this order of committal.

Dated this _____ day of _____ 19 .

Certificate-officer.

(Schedule II.)

FORM No. 10.**Order for the release of a person imprisoned in execution of a Certificate.**

(See sections 31 and 32.)

District

Certificate No. of 19 .

To**THE OFFICER IN CHARGE OF THE CIVIL PRISON**

AT _____

Under orders passed this day, you are hereby directed to set free
 certificate-debtor, now in your custody.

Dated this day of , 19 .

Certificate-officer.

FORM No. 11**(Bengal Form No. 1037.)****Notice to Legal Representative of Certificate-debtor.**

(See section 43.)

To (name of legal representative).

You are hereby informed that a certificate against , deceased, for Rs. due from him on account of , was filed in this office on the , 19 , under section of the Bengal Public Demands Recovery Act, 1913, and that a demand of Rs. , in respect of the said certificate proceeding is due from you as the legal representative of the said deceased. If you deny your liability to pay the said sum of Rs. you may, within thirty days from the service of this notice, file in my office a petition denying liability in whole or in part. If, within the said thirty days, you fail to file such a petition, or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed, it will be executed, under the provisions of the said Act, unless you pay Rs. (Rs. on account of the demand and Rs. on account of costs, of realization) into my office. Until the said amount is so paid, you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.

A copy of the certificate above-mentioned is hereto annexed.

You may remit the amount by money-order, quoting the number and year of the certificate.

Dated this day of , 19 .

A. B.,

Certificate-officer of

of 1913.]

S(chedule II.)

FORM No. 11A.

Warrant of attachment of movable property.

(See sections 13 and 14.)

To

WHEREAS a Certificate No. _____ was filed in this office on the _____
19 _____, under section _____ of the Bengal Public Demands Recovery Act, 1913, against _____
Certificate-debtor and the sum of Rs. _____,
as noted below, is due from him in respect of the said certificate:

Rs. as. p.

Original demand	..	..	..
Interest	..	..	..
Costs	..	..	..
Execution	..	..	..
Total	..	..	..

and whereas the said sum of Rs. _____ has not been paid to the certificate-holder in satisfaction of the said certificate; these are to command you to attach the movable property of the said certificate-debtor* and, unless the said certificate-debtor shall pay to you the said sum of Rs. _____ together with Rs. _____, for the costs of executing this process, to hold the same until further orders from the Court.

You are further commanded to return this warrant on or before the _____ day of _____, 19 _____, with an endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed.

Dated this _____ day of _____, 19 _____.

Certificate-officer.

*When the order is to attach part of the moveable property only, add here "to the value of Rs. _____"

FORM No. 11B.

Notice to persons added to the original certificate.

[See rule 83B(2)].

To

You are hereby informed that a certificate against

(a)

(b)

(c) etc.

for Rs. _____ on account of

was filed in this office on the _____, 19 _____, under section _____ of the Bengal Public Demands Recovery Act, 1913. It now appears that the certificate-debtor

(a) or

(b) or

(c) etc.

had died before the said certificate was filed and that you are liable as his legal representative to satisfy the said demand and your name has accordingly been added in the certificate. If you deny your liability to pay the said sum of Rs. _____ you may, within thirty days from the service of this notice, file in my office a petition denying liability in whole or in part. If, within the said thirty days, you fail to file such a petition or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed, it will be executed under the provisions of the said Act, unless you pay Rs. _____ (Rupees _____ on account of demand and Rs. _____ on account of costs of realisation) into my office. Until the said amount is so paid, you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.

A copy of the certificate above-mentioned is hereto annexed.

You may remit the amount by money order, quoting the number and year of certificate.

Dated the _____ day of _____, 19 _____.

Certificate-officer of

(Schedule II.)

FORM No. 11C.

Notice to surviving certificate-debtor.

[See rule 83B(2).]

WHEREAS a certificate against (a) or
(b) or
(c) etc.

for Rs. on account of was filed in this office on the
19 , and a copy of the said certificate and a notice under section 7 of
the Bengal Public Demands Recovery Act, 1913, has been served on you and whereas the
said (a) or
(b) or
(c) etc.

having died before the filing of the said certificate the name of his legal representative
(X) has been added in and the name of the said (a) or
(b) or
(c) etc.

has been struck out from the said certificate, a copy of the certificate as amended is hereby
annexed for your information..

Certificate-officer of

FORM No. 12.

Attachment in Execution.

**Prohibitory order, where the property consists of debts not being Negotiable Instruments,
or of movable property not in the possession of the Certificate-debtor.**

[See rule 18(1) (a) and (c).]

To

WHEREAS has failed to satisfy
certificate No. of 19 , for Rs. ; it is ordered
that defendant be and is hereby, prohibited and restrained until the further order of this
Court, from receiving from you¹
to the said certificate-debtor, namely,
and that you, the said
be, and you are hereby prohibited and restrained, until the further order of this Court
from² to
any person whomsoever, or otherwise than into this Court.

GIVEN under the seal of the Court this day
of , 19 .

Certificate-officer of

¹"A certain debt alleged now to be due from you," or "certain movable property in your possession but alleged to belong."

²"Making payment of the said debt" or "giving delivery of the said movable property."

of 1913.]

(Schedule II.)

FORM No. 13.

Attachment in Execution.

Prohibitory order, where the property consists of shares in the Capital of a Corporation.

[See rule 18(1) (b).]

To

and to

, certificate-debtor
, Secretary of
Corporation.

WHEREAS Certificate No. of 19 , for Rs. has failed to satisfy
it is ordered that you, the defendant, be and you are hereby, prohibited and restrained, until
the further order of this Court from making any transfer of
shares in the aforesaid Corporation, namely,
or from receiving payment of any dividends thereon; and you
, the Secretary of the said Corporation, are hereby
prohibited and restrained from permitting any such transfer or making any such payment.
GIVEN under the seal of the Court, this day
of 19 .

(Certificate-officer of

FORM No. 14.

Attachment in Execution.

**Prohibitory order, where the property to be attached consists of movable property, to which
the certificate-debtor is entitled subject to a lien or right of some other person to the
immediate possession thereof.**

[See rule 18(1) (c).]

To

WHEREAS Certificate No. of 19 , for Rs. has failed to satisfy
it is ordered that the certificate-debtor be, and is hereby, prohibited and restrained, until
the further order of this Court, from receiving from
the following property in the possession of the said
that is to say,
to which the certificate-debtor is entitled, subject to any claim of the said
and the said is hereby
prohibited and restrained, until the further order of this Court, from delivering the said
property to any person or persons whomsoever.
GIVEN under the seal of the Court, this the day
of 19 .

Certificate-officer of

(Schedule II.)

FORM No. 15.

Order to attach Salary of Public Officer or servant of Railway Company or Local Authority.

[See rule 20.]

To

WHEREAS certificate case No. _____ of _____ certificate-debtor in 19____ is
 a* _____ receiving his $\frac{\text{salary}}{\text{or allowance}}$ at your
 hands; and whereas _____ certificate-holder in the said
 case, has applied in this Court for the attachment of the $\frac{\text{salary}}{\text{or allowances}}$ of
 the said _____ to the extent of _____
 due to him under the certificate, you are hereby required to
 withhold the said sum of _____ from the
 $\frac{\text{salary}}{\text{or allowances}}$ of the said _____ in monthly instalments

of _____ and to remit the said $\frac{\text{sum}}{\text{or monthly instalments}}$
 to this Court.

GIVEN under the seal of the Court, this _____ day of

19 .

(Certificate-officer of _____ .

 * Describe office of certificate-debtor

FORM No. 16.

Order of Attachment of Negotiable Instrument.

[See rule 21.]

To

THE COLLECTORATE Nazir.

WHEREAS an order has been passed by this Court on the
 day of _____ 19____, for the attachment of
 _____, you are hereby directed to seize the said
 and bring the same into Court.

GIVEN under the seal of the Court, this _____
 of _____ 19 .

day

(Certificate-officer.

of 1913.]

(Schedule II.)

FORM No. 17.

Attachment.

Prohibitory order, where the property consists of money or of any security in the custody of a Court of Justice or officer of Government.

(See rule 22.)

To

Certificate case No. of 19 .

SIR,

THE certificate-holder having applied, under rule 22 of Schedule II of the Bengal Public Demands Recovery Act, 1913, for an attachment of certain money now in your hands;¹ I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

SIR,

Your most obedient servant,

Certificate-officer of .

Dated the day of 19 .

¹Here state how the money is supposed to be in the hands of the person addressed, on what account, etc.

FORM No. 18.

(Bengal Form No. 1038.)

Notice to Certificate-holder.

(See rule 39.)

WHEREAS has made application to this Court for the removal of attachment on placed at your instance in execution of Certificate No. of 19 ; this is to give you notice to appear before me on , the day of , 19 , either in person or by a pleader duly instructed to support your claim as attaching creditor.

GIVEN under the Seal of the Court, this day of , 19 .

Certificate-officer.

(Schedule II.)

FORM No. 19.

(Bengal Form No. 1039.)

Warrant of Sale of Property.

(See rule 44.)

To

THE

THESE are to command you to sell by auction, after giving days' previous notice, by affixing the same in this office, and after making due proclamation, the undermentioned property attached in execution of Certificate No. _____ in favour of _____, or so much of the said property as shall realize the sum of Rs. _____, being the _____ of the said certificate and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the _____ day of _____, 19____, with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under the Seal of the Court, this _____ day of _____, 19____.

*Specification of property :—**Certificate-officer.***FORM No. 20.**

(Bengal Form No. 1040.)

Notice of the day fixed for settling a Sale Proclamation.

(See rule 46.)

To _____, Certificate-debtor.

WHEREAS, in execution of Certificate No. _____ of _____ a sale is about to be held of your property mentioned below; you are hereby informed that the _____ day of _____, 19____, has been fixed for settling the terms of the proclamation of sale.

The total amount due from you in respect of the certificate including costs and interest is _____

GIVEN under the Seal of the Court, this _____ day of _____, 19____.

*Specification of property :—**Certificate-officer.*

of 1913.]

(Schedule II.)

FORM No. 21.

(Bengal Form No. 1041.)

Proclamation of Sale.

(See rule 46.)

NOTICE is hereby given that, under rule 44 in Schedule II to the Bengal Public Demands Recovery Act, 1913, an order has been passed by me Certificate No. of 19, under which is the for the sale of the property mentioned in the annexed schedule, certificate-holder and is in satisfaction of the claim of the certificate-holder, under the certificate-debtor. certificate mentioned in the margin, amounting, with costs and interest up to date of sale, to the sum of Rs.

The sale will be by public auction and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the certificate-debtor above-named as mentioned in the schedule below.

In the absence of any order of postponement, the sale will be held by at the monthly sale commencing at o'clock on the at In the event, however, of the debt above specified, and of the cost of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly-authorized agent. The following are the further

Conditions of Sale.

1. The particulars specified in the schedule below have been stated to the best of the information of the Certificate-officer; but the Certificate-officer will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it, subject always to the provisions of rule 50 in Schedule II to the Bengal Public Demands Recovery Act, 1913.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the office of the Certificate-officer closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Certificate-officer thinks fit, be forfeited to the Government, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under Seal of the Court, this

day of

19 .

Certificate-officer.

(Schedule II.)

Schedule of property.

Number of lot.	Description of property to be sold, with the name of each owner where there are more certificate-debtors than one.	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to the Government.	Claims (if any) which have been put forward to the property, and any other known particulars bearing on its nature and value.
1	2	3	4

FORM No. 22.

(Bengal Form No. 1042.)

Order on the Nazir for causing publication of Proclamation of Sale.

(See rule 47.)

To

The Nazir of

WHEREAS an order has been made for the sale of the property of the certificate-debtor under Certificate No. , dated the , 19 , which is specified in the schedule hereunder annexed; and whereas the day of , 19 , has been fixed for the sale of the said property: copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on my office, and then to submit to me a report showing the dates on which and the manner in which the proclamations have been published.

Dated the

day of , 19 .

Schedule.

Certificate-officer.

of 1913.]

(Schedule II.)

FORM No. 23.

(Bengal Form No. 1044.)

Certificate, by Officer holding a Sale, of the Deficiency of Price on a Re-sale of Property by reason of the Purchaser's Default.

(See rule 51.)

CERTIFIED that at the re-sale of the property in execution of Certificate No. _____, dated the _____, 19____, in consequence of default on the part of purchaser, there was a deficiency in the price of the said property, amounting to Rs. _____, and that the expenses attending such re-sale amounted to Rs. _____, making a total of Rs. _____, which sum is recoverable from the defaulter.

Dated the _____ day of _____, 19____.

Officer holding the sale.

FORM No. 24.

Notice to person in possession of movable property sold in execution.

[See rule 59 (2).]

To _____

WHEREAS _____ has become the purchaser at a public sale in execution of Certificate No. _____, dated _____, 19____, of _____ (now in your possession) you are hereby prohibited from delivering possession of the said _____ to any person except the said _____

GIVEN under the Seal of the Court, this _____ day of _____, 19____.

Certificate-officer

FORM No. 25.

Prohibitory order against the transfer of shares sold in execution.

[See rule 59 (3).]

To _____

AND _____, SECRETARY OF

CORPORATION.

WHEREAS _____ has become the purchaser at a public sale in execution of Certificate No. _____, dated _____, 19____, of certain shares in the above Corporation, that is to say, of _____ standing in the name of you _____; it is ordered that you _____ be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said _____, the purchaser aforesaid, or from receiving any dividends thereon; and you _____, Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said _____, the purchaser aforesaid.

GIVEN under the Seal of the Court, this _____ day of _____, 19____.

Certificate-officer.

(Schedule II.)

FORM No. 26.

Prohibitory order against Payment of Debts sold in execution to any other than the purchaser

[See rule 59 (3).]

To

AND TO

WHEREAS

has become the purchaser at a public sale in execution of Certificate No. _____ of 19____, being debts due from you _____ to you _____ it is ordered

it is ordered that you
be, and you are hereby prohibited

from receiving and you

from making payment of the said debt to any person or persons except the said

GIVEN under the Seal of the Court, this _____ day
of _____, 19____.

Certificate-officer of

FORM No. 27.

Certificate to certificate-debtor authorizing him to Mortgage, Lease or sell Property.

(See rule 66.)

WHEREAS in execution of Certificate No. _____ of 19____, an order was made on the _____ day of _____, 19____, for the sale of the undermentioned property of the certificate-debtor _____ and whereas the Court has, on the application of the said certificate-debtor, postponed the said sale to enable him to raise the amount of the certificate by mortgage, lease, or private sale of the said property or of some part thereof :

This is to certify that the Court doth hereby authorize the said certificate-debtor to make the proposed mortgage, lease, or sale within a period of _____ from the date of this certificate: provided that all money payable under such mortgage, lease, or sale shall be paid into this Court and not to the said certificate-debtor.

DESCRIPTION OF PROPERTY.

GIVEN under the seal of the Court, this _____ day
of _____ 19____

Certificate-officer.

of 1913.]

(Schedule II.)

FORM No. 28.

Certificate of Sale of Land.

(See rule 74.)

THIS is to certify that _____ has been declared the purchaser, at a sale by public auction on the _____ day of _____, 19____, of _____ in execution of Certificate No. _____, dated the _____, 19____, and that the said sale has been duly confirmed by me.

GIVEN under the Seal of the Court, this _____ day of _____, 19____.

Certificate-officer.

FORM No. 29.

Order for delivery to certified purchaser of land at a Sale in execution.

(See rule 75.)

To _____

The _____

WHEREAS _____ has become the certified purchaser of _____ at a sale in execution of Certificate No. _____, dated _____, 19____; you are hereby ordered to put the said the certified purchaser, as aforesaid, into possession of the same.

GIVEN under the Seal of the Court, this _____ day of _____, 19____.

Certificate-officer.

FORM No. 30.

Notice to show cause why Warrant of Arrest should not issue.

(See rule 77.)

To _____

WHEREAS _____ has made application to me for execution of Certificate No. _____ of 19____, by arrest and imprisonment of your person; you are hereby required to appear before me on the _____ day of _____, 19____, to show cause why you should not be committed to the Civil Prison in execution of the said Certificate.

GIVEN under the Seal of the Court, this _____ day of _____, 19____.

Certificate-officer.

Bengal Act I of 1914.

(The Bengal Laws Act, 1914)¹.

(14th January 1914.)

An Act to assimilate certain enactments in force in Eastern and Western Bengal to amend certain enactments, and to repeal certain other enactments.

Whereas it is expedient to extend certain enactments of the Bengal Legislative Council to Eastern Bengal, and to extend certain enactments of the Eastern Bengal and Assam Legislative Council to Western Bengal :

And whereas it is also expedient that certain formal amendments should be made in enactments in force in Bengal;

And whereas it is also expedient that certain enactments in force in Bengal should be repealed ;

55 and 56
Vict., c. 14
VII of
1912.

And whereas the previous sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act :

It is hereby enacted as follows :—

1. This Act may be called the Bengal Laws Act, 1914. Short title.

2. In this Act,— Definitions.

(1) “ Eastern Bengal ” means the territory mentioned in Part I of Schedule A to the Bengal, Bihar and Orissa and Assam Laws Act, 1912, and

(2) “ Western Bengal ” means the territory mentioned in Part II of that schedule.

3. The enactments specified in Schedule I are hereby extended to Eastern Bengal, to the extent mentioned in column 4 thereof. Extension of enactments to Eastern Bengal.

4. The enactments specified in Schedule II are hereby extended to Western Bengal, to the extent mentioned in column 4 thereof : Extension of enactments to Western Bengal.

E. B. & A.
Act II of
1907.
Ben. Act
III
of 1884.
Ben. Act
II
of 1866.

Provided that the Eastern Bengal and Assam Disorderly Houses Act, 1907, shall not apply to any municipality, constituted under the Bengal Municipal Act, 1884², in which the Calcutta Suburban Police Act, 1866, is in force.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1913, Pt. IV, p. 150 ; for Reports of Select Committee, see *ibid*, Pt. IV, pp. 152, 173 ; for Proceedings in Council, see *ibid*, Pt. IVA, pp. 659, 660, 779 and 780.

LOCAL EXTENT.—Since this Act has no local extent clause it must be taken to extend to the whole of the Province of Bengal.

¹The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4 (2).

²Ben. Act III of 1884 has been repealed and re-enacted by the Bengal Municipal Act, 1932 (Ben. Act XV of 1932) and this reference should now be construed as a reference to the latter Act—see s. 10 of the Bengal General Clauses Act, 1899 (Ben. Act I of 1899).

[Ben. Act I

(Secs 5-7.)

Amendment
of enactments.

5. The enactments specified in Schedule III are hereby amended to the extent and in the manner mentioned in column 4 thereof.

6. [*Repeal of enactments.*] *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).*

Continuance
of orders, etc.,
issued under
certain
repealed
enactments.

7. Every appointment, order, rule, notification or form made or issued under—

(a) the Land Registration Act, 1876, as amended by the Bengal Land Registration (Amendment) Act, 1906¹,

Ben. Act
VII of
1876.

(b) the Bengal Military Police Act, 1892², or

Ben. Act II
of 1906.

(c) the Bengal Disorderly Houses Act, 1906³,

V of 1892.
Ben. Act

shall, so far as it is not inconsistent with—

III
of 1906.

(i) the Land Registration Act, 1876, as amended by the Eastern Bengal and Assam Land Registration (Amendment) Act, 1907,

(ii) the Eastern Bengal and Assam Military Police Act, 1912, or

E. B. & A.
Act I of
1907.E. B. & A.
Act III of
1912.

(iii) the Eastern Bengal and Assam Disorderly Houses Act, 1907,

E. B. & A.
Act II of
1907.

as the case may be, continue in force, and be deemed to have been made or issued under that Act, unless and until it is superseded by any appointment, order, rule, notification or form made or issued under that Act.

¹Ben. Act II of 1906, is repealed by this Act.

²Act V of 1892, is repealed by this Act.

³Ben. Act III of 1906, is repealed by this Act.

of 1914.]

(Schedules I, II.)

SCHEDULE I.

ENACTMENTS EXTENDED TO EASTERN BENGAL.

(See section 3.)

Year.	Number.	Short title.	How far extended.
1	2	3	4
<i>Bengal Acts.</i>			
1899	I	The Bengal General Clauses Act, 1899.	The whole Act, as applying to— (1) the other Acts specified in this schedule, and (2) any Bengal Act passed after the first day of April, 1912.
1908	V	The Bengal Local Self-Government (Amendment) Act, 1908.	The whole Act.
1909	II	The Bengal Court of Wards (Amendment) Act, 1909.	The whole Act.
1 *	*	*	* *
1911	II	The Bengal Vaccination (Amendment) Act, 1911.	The whole Act.
1911	V	The Calcutta Improvement Act, 1911.	Section 82, and section 86 in so far as it affects section 82.

SCHEDULE II.

ENACTMENTS EXTENDED TO WESTERN BENGAL.

(See section 4.)

Year.	Number.	Short title.	How far extended.
1	2	3	4
<i>Eastern Bengal and Assam Acts.</i>			
1907	I	The Eastern Bengal and Assam Land Registration (Amendment) Act, 1907.	The whole Act.

*The entry relating to Ben. Act II of 1910 which was repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), is omitted.

(Schedules II, III.)

SCHEDULE II.—*concl'd.*ENACTMENTS EXTENDED TO WESTERN BENGAL.—*concl'd.*

(See section 4.)

Year.	Number.	Short title.	How far extended.
1	2	3	4

Eastern Bengal and Assam Acts.

1907	II	The Eastern Bengal and Assam Disorderly Houses Act, 1907.	The whole Act.
1*	*	*	*
1*	*	*	*

SCHEDULE III.

ENACTMENTS AMENDED.

[Not printed here. Amendments incorporated in their parent Acts.]

*The entries relating to E. B. and A. Acts I of 1909 and III of 1912 which were repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938), are omitted.

of 1914.]

(Schedule IV.)

SCHEDULE IV.

[ENACTMENTS REPEALED.]

*Rep. by the Bengal Repealing and Amending Act, 1938 (Ben.
Act, I of 1939.)*

Bengal Act III of 1914.

(*The Doveton Trust Act, 1914*)¹

(18th February 1914.)

An Act to abolish the Parental Academic Institution and Doveton College and Doveton Institution for Young Ladies, and to provide for the application of the property and funds thereof as nearly as possible in accordance with the intentions of the founders.

Whereas, on the first day of March, 1823, an Educational Society was established in Calcutta, under the designation of "The Parental Academic Institution", with the object of establishing one or more schools under its own control in order to procure the means of affording to youth the best education of which existing circumstances would admit, and, as far as the state of funds would allow, to provide education for the orphans of members dying not possessed of property sufficient to educate their children ; Preamble.

And whereas the designation of the said Society was changed in the year 1855 to that of "The Parental Academic Institution and Doveton College" ;

And whereas the said Society was registered as a Society under the Societies Registration Act, 1860, on the twentieth day of August, 1881 ;

And whereas the designation of the said Society was again changed in the year 1886, on the incorporation therewith of "The Young Ladies' Institution," to that of "The Parental Academic Institution and Doveton College and Doveton Institution for Young Ladies" ;

And whereas various properties and funds have from time to time been vested in the Governing Body of the said Society, and in other persons, for the benefit of, or in trust for, the said Institution or pupils to be educated therein ;

And whereas the said Institution is now governed by certain persons claiming to be a Committee duly elected or appointed under an order made by the High Court, Calcutta, on the eighth day of April, 1907 ;

And whereas it appears to the Governor in Council that the said Committee are unable satisfactorily to manage the said Institution according to the intentions of its founders, and that

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1913, p. 172; for Report of Select Committee, see *ibid.*, p. 248; for Proceedings in Council, see *ibid.*, Pt. IVA, pp. 730 to 733, 791 to 794; *ibid.*, 1914, Pt. IVA, p. 31.

[Ben. Act III]

(Secs. 1-5.)

portions of the property and funds of the Institution have been wasted away in litigation and by mismanagement, and that it is expedient that the Legislature should intervene in order to prevent further waste and mismanagement ;

And whereas it appears to the Governor in Council that the objects of the founders of the said Institution would best be met by providing for the application of its property and funds, under the direction of the Government, to the education of Christian children of what is known as the Domiciled Community of Bengal ;

And whereas the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

55 & 56
Vict., c. 14.

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Doveton Trust Act, 1914.

Abolition of the Doveton Institution.

2. The "Parental Academic Institution and Doveton College and Doveton Institution for Young Ladies" is hereby abolished.

Vesting and application of trust property and funds.

3. All property, movable and immovable, which is vested in the Managing Committee of the said Institution, or in any other person, for the benefit of the said Institution or otherwise in trust therefor, and all sums standing to the credit of the said Institution, shall vest in the Accountant-General, Bengal, as bare trustee, and shall be applied—

(a) to the discharge of all debts and liabilities properly payable out of, or chargeable upon, the property or funds of the said Institution, and

(b) to making provision for the education of Christian children of what is known as the Domiciled Community of Bengal, by the granting of scholarships, by grants-in-aid to Institutions intended for the education of such children, or in such other similar manner as to the ¹[Provincial Government] may seem reasonable and proper.

Appointment of administrator, and transfer of powers to him.

4. The ¹[Provincial Government] shall, by notification in the ²*Official Gazette*, appoint an officer of [the ³Crown] (not being the Accountant-General, Bengal) by the name of his office to administer the property and sums referred to in section 3 ; and all powers in respect of such property and sums, which have hitherto been exercisable by the said Managing Committee or by any other person, may henceforth be exercised by such officer subject to the control of the ¹[Provincial Government].

Power to make rules.

5. (1) The ¹[Provincial Government] may make rules to carry out the purposes of this Act.

¹These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "*Calcutta Gazette*", *ibid*.

³These words were substituted for the words "the Government" by Sch. IV, *ibid*.

of 1914.]

(Sec. 6.)

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the method of applying property and funds held under this Act to the purpose specified in clause (b) of section 3 ;
- (b) the securities in which funds held under this Act and not required for immediate disbursement shall be invested ;
- (c) the accounts to be kept by the Accountant-General, Bengal, and by the officer appointed under section 4, and the mode in which such accounts are to be audited ;
- (d) the periodical publication of a list of all property and funds held under this Act, and of an abstract of all accounts kept hereunder ;
- (e) the fees (if any) to be paid to ¹[the Provincial Government] in respect of property held and administered under this Act.

(3) The power conferred by this section to make rules is subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be published in the ²[*Official Gazette*], and on such publication shall have effect as if enacted in this Act.

6. (1) No suit shall be instituted against ³[the Crown] in respect of anything done or purporting to be done under this Act, or in respect of any alleged neglect or omission to perform any duty devolving on ¹[the Provincial Government] under this Act, or in respect of the exercise of, or the failure to exercise, any power conferred by this Act on ¹[the Provincial Government]. Indemnity.

(2) No suit shall be instituted against the Accountant-General, Bengal, or any officer appointed under section 4, except—

- (a) for divesting him of property on the ground of its not being subject to this Act, or
- (b) for making him chargeable with or accountable for the loss or misapplication of any property vested in or managed by him under this Act, or the income thereof, where the loss or misapplication has been occasioned by or through his wilful act, neglect or default.

¹These words were substituted for the words "the Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "*Calcutta Gazette*," by paragraph 4 (1), *ibid*.

³These words were substituted for the words "the Government," by Sch. IV, *ibid*.

Bengal Act V of 1914.

(The Chittagong Port Act, 1914.)

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title and commencement.
 2. Repeals.
 3. Commissioners the successors to Commissioners constituted under Bengal Act IV of 1887.
 4. Definitions.
 5. Power to Central Government to alter and define limits of Port.
-

CHAPTER II.

CONSTITUTION OF THE COMMISSIONERS.

6. Commissioners a body corporate.
 7. Composition of the body corporate.
 8. Mode of election.
 9. Nomination by Central Government in default of election.
 10. Appointment of Chairman and Vice-Chairman.
 11. Tenure of office.
 12. Disqualification for office.
 13. Absence from meetings.
 14. Time for holding elections and filling vacancies.
 15. Temporary leave vacancies.
 16. Casual vacancies.
 17. Remuneration of Chairman, Vice-Chairman and Commissioners.
 18. Leave of absence of Chairman.
 19. Notification in the Official Gazette of elections and appointments.
-

CHAPTER III.

CONDUCT OF BUSINESS BY THE COMMISSIONERS.

20. Power to Commissioners to appoint committees.
21. Ordinary and special meetings.
22. Notice and place of meetings.
23. [Omitted by S. 13 of Act XI of 1928.]

SECTION.

24. President of meetings.
25. Conduct of business at meetings.
26. By-laws for the conduct of business, etc.
27. Powers of Chairman or Vice-Chairman.
28. The making of contracts.
29. Mode of executing contracts and agreements.
30. Manner in which works to be sanctioned.
31. Power to Commissioners to compound.
32. Formal defects.

CHAPTER IV.

OFFICERS AND SERVANTS.

33. Schedule of establishment.
34. Temporary establishment.
35. By-laws relating to officers and servants.
36. Appointment of officers and servants.
37. Pilots.

CHAPTER V.

GENERAL POWERS OF THE COMMISSIONERS.

Construction of Works, etc.

38. Works to be constructed.

Port By-laws.

39. Power to Commissioners to make Port-by-laws.

Public Landing-places, etc.

40. Free public landing-places.
41. Removal of bathing-places and landing-places.

Landing and Shipment of Goods, and Registration of Cargo-boat traffic.

42. Appliances for shipment and landing in and from sea-going vessels.
43. Power to Commissioners to compel sea-going vessels to use docks, wharves, etc.
44. When all sea-going vessels may be compelled to use docks, wharves, etc.
45. Power to Commissioners to compel inland vessels to use docks, wharves, etc.
46. Prior publication of notifications under sections 43, 44 and 45.
47. Tolls and charges in the case of railway jetties.
48. Power to Commissioners to order removal of vessels from docks, wharves, etc.

of 1914.]

SECTION.

49. Power to Central Government to exempt from obligation to use docks, wharves, etc.
50. Discharge of liability on goods landed.
51. Accommodation for Customs officers on docks, wharves, etc.
52. Dues at Customs docks, wharves, etc.
53. Registration of cargo-boat traffic.

Private Docks, Wharves, etc.

54. Prohibition of private docks, wharves, etc.
55. Power to Commissioners to permit private docks, wharves, etc.
56. Docks, wharves, etc., beyond port limits.

Tolls and Charges.

57. Scales of tolls and charges to be framed.
58. Power to Commissioners to impose river-due and to alter the rates thereof.
59. Power to Commissioners to levy customs duty on jute exported by sea.
60. Commissioner's lien for tolls and charges.
61. Shipowner's lien for freight.
62. Discharge of shipowner's lien for freight.
63. Power to Commissioners to remove goods to warehouses.
64. Recovery by Commissioners of tolls and charges by sale of goods.
65. Application of sale-proceeds.
66. Recovery by Commissioners of tolls and charges by distraint of vessel.
67. Port-clearance not to be granted until tolls, etc., are paid.

Compensation for damage to Port Property.

68. Compensation for damage to property of Commissioners.

CHAPTER VI.

Property of the Commissioners.

69. Power to Commissioners to hold and dispose of property.
70. Property vested in the Commissioners.
71. Resumption of property by Government.
72. Acquisition of land.
73. Property to be in trust.

CHAPTER VII.

Borrowing Powers.

SECTION.

74. Power to Commissioners to borrow.
 75. Security for moneys raised under this Act.
 76. Form and transferability of debentures, and the rights of Government and of debenture-holders.
 77. Loans a first charge.
 78. Establishment of sinking fund.
 79. Annual examination of sinking fund.
 80. Power to Commissioners to repay loans to Government before due date.
 81. Disposal of unexpended balances.
-

CHAPTER VIII.

DISPOSAL OF FUNDS.

82. Banking of moneys.
 83. Investment of balances and special funds.
 84. Application of moneys.
 85. Cost of Port Police.
-

CHAPTER IX.

ESTIMATES AND ACCOUNTS.

86. Annual estimate to be prepared and considered.
 87. Submission and publication of estimate.
 88. Supplementary estimates.
 89. Re-appropriation of amounts in estimate.
 90. Prohibition of expenditure not provided for in estimates.
 91. Report of exceptional expenditure to Central Government.
 92. Capital expenditure.
 93. Audit of accounts.
 94. Submission of accounts to Central Government.
-

CHAPTER X.

CONTROL OF GOVERNMENT.

95. Control of Central Government over Commissioners' acts and proceedings.
96. Annual and other reports.
97. Power to Central Government to insist on imposition or increase of rates, etc.

of 1914.]

SECTION.

- 98. Power to Central Government to require modification of scales.
- 99. Power to Central Government to order survey.
- 100. Power to Central Government to carry out neglected works.
- 101. Power to Central Government to revoke powers of Commissioners.

CHAPTER XI.

PENALTIES AND PROCEDURE.

- 102. Unlawful interest of Commissioner in contracts or employment.
- 103. Unlawful interest of officer or servant in contracts or employments.
- 104. Infringement of by-laws, orders, etc.
- 105. Prosecutions.

CHAPTER XII.

MISCELLANEOUS.

- 106. Commissioners, etc., to be public servants.
- 107. Exemption of Commissioners from personal liability.
- 108. Liability of Commissioners for breach of trust.
- 109. Notice and limitation of suits.
- 110. Responsibility of Commissioners for loss, etc.
- 111. Indemnity to Commissioners for acts of officers, etc.
- 112. Saving of previous Port Regulations, etc.
- 113. Recovery of dues as arrears of land revenue.

FIRST SCHEDULE.—ENACTMENTS REPEALED.

SECOND SCHEDULE.—FORM OF RECEIPT FOR GOODS.

THIRD SCHEDULE.—PROPERTY VESTED IN THE COMMISSIONERS—

PART I.—Immovable property transferred by Government to the Commissioners constituted under the Chittagong Port Commissioners Act, 1887.

PART II.—Immovable property acquired otherwise than by direct transfer from Government.

Bengal Act V of 1914.

(The Chittagong Port Act, 1914).¹

(13th May 1914.)

An Act to consolidate and amend the law relating to the Port of Chittagong.

WHEREAS it is expedient to consolidate and amend the law relating to the Port of Chittagong ;

And whereas the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called “ The Chittagong Port Act, 1914 ” ; and

Short title and commencement.

(2) It shall come into force on such date² as the³ Provincial Government] may by notification direct.

2. The enactments specified in the First Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

Repeals.

3. All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Commissioners of the Port of Chittagong constituted under “ The Chittagong Port Commissioner Act, 1887,”⁴

Commissioners the successors to Commissioners constituted under Bengal Act IV of 1887.

Ben. Act
IV of
1887.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see Calcutta Gazette*, 1913, Pt. IV, pp. 229 to 233 ; for Report of Select Committee, *see ibid*, 1914, Pt. IV, pp. 2 to 4 ; for Proceedings in Council, *see ibid*, 1913, Pt. IVA, pp. 795, 796, *ibid*, 1914, Pt. IVA, pp. 18, 165 to 168.

LOCAL EXTENT.—This Act extends only to the Port of Chittagong, *see* the title and preamble.

²This Act came into force on the 1st July, 1914, *see* Notification No.90 Marine, dated the 23rd June, 1914, published in the *Calcutta Gazette*, dated the 24th idem, Pt. I, p. 1213.

³These words were substituted for the words “ Local Government ” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Ben. Act IV of 1887 has been repealed by this Act, *see* Sch. I.

[Ben. Act V

(Chapter I.—Preliminary.—Sec. 4.)

shall be deemed to have incurred, entered into or engaged to be done by, with or for the Commissioners constituted under this Act ;

and all rates and sums of money due to the Commissioners, constituted under "The Chittagong Port Commissioners Act, 1887"¹, shall be deemed to be due to the Commissioners constituted under this Act ;

Ben. Act
IV of
1887.

and all suits and other legal proceedings, civil or criminal, instituted or which might but for the passing of this Act have been instituted by or against the Commissioners constituted under "The Chittagong Port Commissioners Act, 1887"¹, may be continued or instituted by or against the Commissioners constituted by this Act.

Definitions.	4. In this Act, unless there is anything repugnant in the subject or context,—
"The Commissioners."	(1) "the Commissioners" shall mean "the Commissioners for the Port of Chittagong" hereinafter incorporated ;
"Commissioner."	(2) "Commissioner" shall mean a member of the said Corporation ;
"Dock."	(3) "dock" shall include all basins, cuts, quays, wharves, warehouses, tramways and other works and things appertaining to any dock ;
"Goods."	(4) "goods" shall include wares and merchandise of every description ;
"High-water mark."	(5) "high-water mark" shall mean a line drawn through the highest points reached by ordinary spring-tides at any season of the year ;
"Land."	(6) "land" shall include the bed of the river below high-water mark, and also things attached to the earth or permanently fastened to things attached to the earth ;
Low-water mark."	(7) "low-water mark" shall mean the lowest point reached at ordinary ebb spring-tides at any season of the year ;
"Master."	(8) "master", when used in relation to any vessel, means any person (not being a pilot or harbour-master)

¹Ben. Act IV of 1887 has been repealed by this Act, see Sch. I.

of 1914.]

(Chapter I.—Preliminary.—Sec. 5.)

having for the time being the command or charge of such vessel ;

- (9) "owner" shall include also any agent to whom a "Owner," vessel is consigned ;
- (10) "pier" shall include any stage, stairs, landing- place, jetty, floating-barge or pontoon and any bridges or other works connected therewith ;
- (11) "pilot" shall mean a person for the time being authorized by the ¹[Central Government] under section 3 of the Indian Ports Act, 1908, to pilot vessels to, from, or within, the port ;
- (12) "port" shall mean the Port of Chittagong as for the time being defined for the purposes of this Act ;
- (13) "vessel" shall include any ship, barge, boat, raft or craft, or any other thing whatever, designed or used for the transport upon water of passengers or goods ;
- (14) "wharf" shall include any bank of the river which may be improved to facilitate the loading or unloading of goods, and any foreshore used for the same, and any wall enclosing or adjoining such bank or foreshore.

XV of
1908.

5. (1) The ²[Central Government] may, by notification, define the limits of the port for the purposes of this Act; and may from time to time, by a like notification, alter such limits.

Power to
Central
Government
to alter
and define
limits of Port.

(2) Such limits may extend to any part of the navigable approaches to Chittagong, and may include any docks, wharves, quays, stages, jetties, piers, tramways, warehouses, sheds and other works made on behalf of the public for the convenience of traffic, for the safety of vessels or for the improvement, maintenance and good government of the port or river, whether within or without high-water mark, and (subject to any right of private property therein) any portion of the shore or bank within fifty yards of high-water mark.

¹These words were substituted for the words "Local Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Governor-General in Council" by paragraph 4(1), *ibid.*

(Chapter II.—Constitution of the Commissioners.—

Secs. 6-8).

CHAPTER II.

CONSTITUTION OF THE COMMISSIONERS.

Commissioners
a body
corporate.

6. (1) The duty of carrying out the provisions of this Act shall, subject to such conditions and limitations as are herein-after contained, be vested in a body of Commissioners to be called "the Commissioners for the Port of Chittagong."

(2) Such body shall be a body corporate and have perpetual succession and a common seal, and may sue and be sued in its corporate name, and, in addition to the powers expressly conferred by this Act, shall have power, subject to the provisions of this Act, to do all other things necessary for the purposes of its constitution.

Composition of
the body
corporate.

17. There shall be twelve Commissioners, as follows :—

- (a) the Chairman,
- (b) the Collector of Chittagong District, *ex-officio*,
- (c) the Customs-Collector of the port, *ex-officio*,
- (d) one Commissioner appointed by the ²[Central Government],
- (e) one Commissioner appointed by the administration of the Assam-Bengal Railway,
- (f) three Commissioners elected by the Chamber of Commerce at Chittagong,
- (g) three Commissioners elected by the Chittagong Indian Merchants' Association, or by such body or bodies or firms as the ²[Central Government] may, from time to time, select as best representing the interests of the Indian mercantile community at Chittagong, and
- (h) one Commissioner elected by the Municipal Commissioners of Chittagong.

Mode of
election.

18. The election of Commissioners shall be made in such manner as may be determined by the electing bodies in each case, subject to the approval of the ²[Central Government]

¹Section 7 was substituted by s. 4 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

²See foot-note 2 on p. 477, *ante*.

³Section 8 was substituted by s. 5 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

of 1914.]

(Chapter II.—Constitution of the Commissioners.—Secs. 9-11).

9. In the event of default being made by the electing body, bodies or firms referred to in section ¹[7] in electing any Commissioner within the period prescribed by section 14, it shall be lawful for the ²[Central Government] to appoint a person ; and the person so appointed shall be deemed to be a Commissioner as if he had been elected by such body, bodies or firms.

Nomination by Central Government in default of election.

³10. (1) The Chairman shall be appointed by the ²[Central Government].

Appointment of Chairman and Vice-Chairman.

(2) A Vice-Chairman shall be elected by the Commissioners from amongst themselves, at a special meeting called for the purpose, and his appointment shall be subject to the approval of the ²[Central Government].

⁴11. (1) The Chairman shall hold office until the ²[Central Government] accepts his resignation or cancels his appointment.

Tenure of office.

(2) The Vice-Chairman shall hold office until a new body of elected Commissioners shall have been duly elected, or until the ²[Central Government] accepts his resignation, or until the Commissioners, at a special meeting called for the purpose and with the approval of the ²[Central Government], remove him from office.

Explanation.—A new body of elected Commissioners shall be deemed to have been duly elected when, at a general election of such Commissioners, four or more elections have been notified under section 19.

(3) A Commissioner appointed under clause (d) or clause (e) of section 7 shall hold office until he resigns, or until the authority appointing him cancels his appointment.

(4) An elected Commissioner shall, subject to the provisions of this Act, hold office for a term of two years or thereafter until his successor shall have been duly elected, and shall be eligible for re-election : but the ²[Central Government] may, at any time, accept the resignation of any such Commissioner.

¹This figure was substituted for the figure "8" by s. 6 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

²See foot-note 2 on p. 477, *ante*.

³Section 10 was substituted by s. 7, of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

⁴Section 11 was substituted by s. 8, *ibid*.

(Chapter II.—Constitution of the Commissioners.—Sec. 12.)

Disqualification
for office.

12. No person shall be qualified to be a Commissioner during such time as he—

- (a) is an undischarged insolvent, or
- (b) holds any office or place of profit under this Act, except the office of Chairman or Vice-Chairman, or,
- (c) save with the sanction of the ¹[Central Government] has, directly or indirectly, any share or interest in any work done by order of the Commissioners, or in any contract, or employment with, by, or on behalf of the Commissioners, or

(d) is under sentence of imprisonment :

and every Commissioner becoming so disqualified shall thenceforth cease to be a Commissioner and his office shall thereupon become vacant :

Provided always that no Commissioner shall vacate his office by reason only of—

- (i) his being a shareholder in or a member or employee of any company (registered under the provisions of any Act for the registration of joint-stock companies passed by ²[any Legislature in India] or by the Parliament of the United Kingdom, or incorporated by Act of Parliament, Royal Charter, or otherwise,) with which the Commissioners may enter into any contract, or
- (ii) his being interested as a debenture-holder in any loan of money to the Commissioners, or
- (iii) his being interested in any purchase or lease of land or premises, the sale or lease of which the Commissioners may determine on at a meeting under the provisions of this Act, or
- (iv) his being interested in any agreement under which facilities may be granted for the landing or shipment of goods in return for stipulated income guaranteed to the Commissioners in consideration of their undertaking to construct or provide such facilities, or

¹See foot-note 2 on p. 477. *ante*.

²These words were substituted for the words "any Indian Legislature" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1914.]

(Chapter II.—Constitution of the Commissioners.—Secs. 13-16.)

- (v) his having a share or interest in any newspaper in which any advertisement relating to the affairs of the Commissioners may be inserted.

13. Every person who at any time after his election or appointment by name as a Commissioner shall be absent for more than three consecutive months from the meetings of the Commissioners without having previously obtained the permission in that behalf of the Commissioners, or who shall with such permission be absent from the meetings for a period exceeding six months shall thenceforth cease to be a Commissioner and his office shall thereupon become vacant.

Absence from meetings.

14. The elections of Commissioners shall be held before the expiry of the term of two years specified in sub-section (4) of section 11, or within one month thereafter, and all vacancies shall be filled within one month from their occurrence.

Time for holding elections and filling vacancies.

15. (1) A temporary vacancy caused by the absence on leave of any Commissioner for a period of not less than three months nor more than six months may, if the ²[Central Government] ³[thinks] fit, be filled up by election or appointment, as the case may be, in the manner hereinbefore in this chapter provided.

Temporary leave vacancies.

(2) A person elected or appointed under this section shall hold office until the expiry of the leave granted to the Commissioner whose place he fills.

16. Save as provided in section 15, any vacancy in the office of a Commissioner occasioned during the period of two years mentioned in section 11, sub-section ⁴[(4)], by the death, resignation, disqualification or absence of any Commissioner shall be filled up ⁵[by election] as hereinbefore in this chapter provided⁶ * * * but the Commissioner so elected⁷ * * * shall retain his office so long only as the vacating Commissioner would have retained it if such vacancy had not occurred.

Casual vacancies.

¹This section was substituted by s. 9 of the Chittagong Port (Amendment) Act, 1928 (X1 of 1928).

²See foot-note 2 on p 477, *ante*.

³This word was substituted for the word "think" by s. 10 of the Chittagong Port (Amendment) Act, 1928 (X1 of 1928).

⁴This figure was substituted for the figure "3" by s. 11, *ibid*.

⁵These words were inserted, *ibid*.

⁶The words "by election or appointment, as the case may be," were omitted, *ibid*.

⁷The words "or appointed" were omitted, *ibid*.

[Ben. Act V

(Chapter II.—Constitution of the Commissioners.—Chapter III.—Conduct of Business by the Commissioners.—Secs. 17-21.)

Remuneration of Chairman, Vice-Chairman and Commissioners.

17. It shall be lawful for the ¹[Central Government] by an order, from time to time to determine whether any, and what, salary and allowances shall be paid to the Chairman and Vice-Chairman, respectively, and whether any, and what, fees shall be paid to the Commissioners for attendance at meetings at which a quorum shall be present, and business shall be transacted.

Leave of absence of Chairman.

²18. The ¹[Central Government] may grant leave of absence to the Chairman, and may appoint a person to officiate for him during his absence on leave. Any person so appointed shall be deemed to be the Chairman for the purposes of this Act.

Notification in the Official Gazette of elections and appointments.

19. All elections and appointments made, and all resignations accepted, under this chapter, shall be notified in the ³[Official Gazette] and shall take effect from the date of such notification.

CHAPTER III.

CONDUCT OF BUSINESS BY THE COMMISSIONERS.

Power to Commissioners to appoint committees.

20. (1) The Commissioners may from time to time, in accordance with a resolution passed at a meeting, appoint committees of their number for carrying into effect any part of the provisions of this Act, with such powers, and under such instructions, directions or limitations as by such resolution shall be defined.

(2) On any such committee three members shall be a quorum.

(3) The Commissioners in meeting may alter or discontinue any such committee.

Ordinary and special meetings.

21. (1) The Commissioners shall ordinarily meet, for the transaction of business, at least once in every month.

(2) The Chairman, or, in the event of his illness or absence from Chittagong, the Vice-Chairman may, whenever he

¹See foot-note 2 on p. 477, ante.

²This section was substituted by s. 12 of the Chittagong Port (Amendment), Act, 1928 (XI of 1928).

³These words were substituted for the words "Gazette of India" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1914.]

(Chapter III.—Conduct of Business by Commissioners.—
Secs. 22-25.)

thinks fit, and shall, upon a requisition in writing signed by not less than three Commissioners, convene a meeting of the Commissioners for the transaction of any special business.

(3) Meetings convened under sub-section (2) are special meetings ; all other meetings are ordinary meetings.

22. (1) At least three days' notice shall ordinarily be given of meetings of the Commissioners, and the notice shall state the nature of the business to be transacted. Notice and place of meetings.

(2) Notwithstanding anything contained in sub-section (1), when the Chairman or Vice-Chairman, as the case may be, certifies that the business to be transacted at a special meeting is of an urgent nature, such meeting may be held after such notice as, in the opinion of the Chairman or Vice-Chairman, the urgency of the case permits.

(3) Meetings shall ordinarily be held at the office of the Commissioners.

23. [*Representation of Agent, Assam-Bengal Railway, by other officer.*] Omitted by s. 13 of Act XI of 1928.

24. (1) The Chairman and Vice-Chairman shall, unless prevented by sickness or other reasonable cause, attend all meetings of the Commissioners. President of meetings.

(2) The Chairman, or, in his absence, the Vice-Chairman, shall preside at every such meeting.

(3) In the absence of both the Chairman and Vice-Chairman, the Commissioners present at any meeting may elect one of their number to preside.

25. At all meetings of the Commissioners the business shall be conducted in accordance with the following rules :— Conduct of business at meetings.

- (a) the quorum necessary for the transaction of business shall be such number, not less than ¹[five] as the Commissioners may from time to time prescribe ; but no Commissioner who is prohibited as hereinafter in this section provided from voting in any proceedings shall be counted in the quorum so far as regards such proceedings ;

¹This word was substituted for the word "four" by s. 14 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

*(Chapter III.—Conduct of Business by the Commissioners.—
Sec. 25.)*

- (b) at ordinary meetings any business may be transacted of which due notice has been given :

Provided that any other business may be transacted if two-thirds of the total number of Commissioners present resolve that it is of an urgent nature ;

- (c) at special meetings no business shall be transacted other than the special business for the consideration of which the meeting was specially called ;

- (d) all questions which may come before the Commissioners at any meeting shall be decided by a majority of votes. Each Commissioner shall have one vote ; and, in case of equality of votes, the President shall have a second or casting vote :

Provided that no Commissioner shall at any meeting vote on any matter (other than a proposal to issue a notification or order under section 43, section 44 or section 45) in which he has, directly or indirectly, by himself or his partner, any share or interest such as is described in any of the provisos to section 12 or in which he is interested either professionally on behalf of a client or as agent for any person other than the ¹[Crown], a local authority, or a Railway Company ;

- (e) the President may, with the consent of the meeting, adjourn the meeting from time to time ;

- (f) minutes of the proceedings at all meetings of the Commissioners shall be drawn up after each meeting, and shall be signed by the President and at least one other Commissioner who was present at such meeting. A copy of all such minutes shall, as soon as conveniently may be, be transmitted to the ²[Central Government] ;

- (g) another copy of such minutes, except such portions thereof as the Chairman may in any particular case direct, shall be open to the inspection of the public.

¹This word was substituted for the word " Government " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 2 on p. 477, *ante*.

of 1914.]

(Chapter III.—Conduct of Business by the Commissioners.—
Secs. 26-28.)

26. The Commissioners in meeting may from time to time make by-laws, consistent with this Act, for any of the following purposes, namely:—

By-laws for the conduct of business, etc.

- (a) for regulating the time and place of their meetings ;
- (b) for the conduct of the business of the Commissioners ;
- (c) for division of the duties of the Commissioners ;
- (d) for the guidance of persons employed by them under this Act ; and
- (e) generally for otherwise carrying out the provisions of this chapter.

27. ¹[(1)] All the powers, authorities and duties, in and by this Act conferred or imposed upon the Commissioners, may be exercised and performed by the Chairman or Vice-Chairman, save the powers, authorities and duties by this Act, or by any rule, by-law or order made under the provisions of this Act, conferred or imposed on, or restricted to, the Commissioners in meeting :

Powers of Chairman or Vice-Chairman.

Provided that such powers, authorities and duties shall not be exercised by the Chairman or Vice-Chairman in contravention of any order issued, or rule or by-law passed by the Commissioners in meeting.

¹(2) The Chairman may, in the event of his illness or absence from Chittagong and for the duration thereof, delegate to the Vice-Chairman all or any of his powers or duties under this Act.

28. (1) The Commissioners may enter into contracts authorised by this Act with any person for the execution or supply of any works, labour, materials, machinery, stores, or for other matters necessary for carrying into effect the trusts and purposes of this Act.

The making of contracts.

(2) Any such contract, the value or amount of which does not exceed two thousand five hundred rupees, may be made by the Chairman in the case of any work or matter which he is authorised to carry out by this Act or the rules or by-laws thereunder or which has been sanctioned by the Commissioners, but other contracts shall not be entered into except in accordance with a resolution passed by the Commissioners in meeting.

(3) Notwithstanding anything contained in sub-section (1) and sub-section (2), no contract, under or by which a sum greater than twenty-five thousand rupees may in any event be payable by the Commissioners, shall be valid without the assent of the ²[Central Government].

¹Section 27 was re-numbered as sub-section (1) of section 27 and sub-section (2) was added by s. 2 of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

²See foot-note 2 on p. 477, ante.

(Chapter III.—Conduct of Business by the Commissioners.
—Chapter IV.—Officers and Servants.—Secs. 29-33.)

Mode of
executing
contracts and
agreements.

29. (1) Any contract, the value or amount of which does not exceed two thousand five hundred rupees, made by the Chairman for and on behalf of the Commissioners may be made in such a manner and form as, according to the law for the time being administered in Chittagong, would bind him if such contract were on his own behalf.

(2) Every contract or agreement by or on behalf of the Commissioners which shall exceed the sum of two thousand five hundred rupees shall be in writing and signed by the Chairman or Vice-Chairman and by two other Commissioners, and shall be sealed with the common seal of the Commissioners.

(3) No contract or agreement, not executed as in this section provided, shall be binding upon the Commissioners.

Manner in
which works to
be sanctioned.

30. No new work shall be commenced, and no contract in respect thereof shall be entered into, if the estimated cost of such work exceeds—

(i) two thousand five hundred rupees, until the plan and estimate therefor shall have been determined on and approved by the Commissioners in meeting ;

(ii) twenty-five thousand rupees, until the plan and estimate therefor shall have been submitted to, and approved by, the ¹[Central Government].

Power to
Commissioners
to compound.

31. The Commissioners in meeting may abandon, compound or compromise any claim or demand on such terms as to them may seem fit.

Formal defects.

32. No Act or proceeding of the Commissioners shall be invalidated or deemed illegal by reason only of any vacancy in the number of the Commissioners, or of any defect in the election or appointment of any of the Commissioners, or of any defect in the notice given of any meeting, or any defect of form.

CHAPTER IV.

OFFICERS AND SERVANTS.

Schedule of
establishment.

33. (1) The Commissioners shall from time to time prepare and in meeting sanction schedules of the staff of officers

¹See foot-note 2 on p. 477, *ante*.

of 1914.]

(Chapter IV.—Officers and Servants.—Secs. 34, 35.)

and servants whom they deem it necessary to maintain for carrying out the purposes of this Act, and of the salaries, fees, and allowances assigned to such officers and servants.

(2) A copy of the said schedules shall be attached to the annual budget estimates, and another copy to the annual administration report of the Commissioners.

(3) The approval of the ¹[Central Government] shall be required to the creation of any new post, the total emoluments of which exceed on the average one hundred rupees a month, and to any change in the remuneration of any such post.

(4) Artisans, porters and labourers shall not be deemed to be officers or servants within the meaning of sub-section (1).

34. Subject to the condition that the expenditure can be duly met from the sanctioned annual budget estimates, the Chairman may make any temporary appointment for a period not exceeding three months on a salary not exceeding one hundred rupees a month, and the Commissioners in meeting may make any temporary appointment for a period not exceeding six months on a salary not exceeding two hundred and fifty rupees a month.

Temporary establishment.

35. (1) The Commissioners in meeting may from time to time make by-laws—

By-laws relating to officers and servants.

- (a) for regulating the grant of leave to officers and servants of the Commissioners;
- (b) for authorising the payment of allowances to any such officers and servants while absent on leave;
- (c) for determining the remuneration to be paid to the persons appointed to act for any such officers and servants during their absence on leave;
- (d) for regulating the period and other terms of service of all such officers and servants;
- (e) for determining the conditions under which any such officers and servants shall, on retirement, receive pensions, gratuities or compassionate allowances, and the amount of such pensions, gratuities and compassionate allowances;
- (f) for determining the conditions under which pensions, gratuities or compassionate allowances may be paid to any of such officers or servants injured ²[in the execution of their duty], or to surviving relatives of any such officers or servants ³[who die while in the service of the Commissioners], whether the injury or death occurred before or after the commencement of this Act;

¹See foot-note 2 on p. 477, *ante*.

²These words were inserted by s. 3(1)(a) of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

³These words were substituted for the words "killed, in the execution of their duty" by s. 3(1)(b), *ibid*.

(Chapter IV.—Officers and Servants.—Sec. 36.)

(g) for establishing and maintaining a provident or annuity fund, and in respect thereto—

(i) compelling all or any of such officers or servants (other than ¹[persons in the service of the Crown]) to subscribe to such fund and, if necessary, providing for the deduction of such subscription out of the salaries or emoluments of such officers or servants;

(ii) fixing the conditions under which payments may be made out of such fund, and under which such payment shall discharge the fund from further liability;

(iii) providing for the settlement, by arbitration or otherwise, of disputes relating to such fund or the payments or subscription thereto or claims thereon, between the Commissioners and other persons, or between persons claiming any share or interest therein; and

(iv) regulating generally other matters incidental to such fund and the investment thereof;

²(gg) for establishing and maintaining funds (hereinafter referred to as welfare funds) for the benefit of such officers and servants, and for regulating generally matters incidental to such welfare funds and the investment thereof :

Provided that no such welfare funds shall be established without the previous sanction of the ³[Central Government] : and that the maximum amount to which any such fund may be allowed to accumulate shall be fixed from time to time by the ³[Central Government].

(h) for providing for the payment by the Commissioners out of other funds vested in the Commissioners of contributions to any provident or annuity fund established by or with the approval of the Commissioners.

(2) By-laws framed under this section shall not come into force unless and until they have been confirmed by the ³[Central Government].

36. Subject to the provisions of such by-laws, the power of appointing, promoting, suspending, dismissing, fining, reducing or granting leave to the officers and servants of the

Appointment
of officers and
servants.

¹These words were substituted for the words "Government Officials" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Clause (gg) was inserted by s. 3(2) of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

³See foot-note 2 on p. 477, ante.

of 1914.]

(Chapter IV.—Officers and Servants—Chapter V.—General Powers of the Commissioners.—Secs. 37, 38.)

Commissioners required for the appointments sanctioned for the time being in the schedule framed under section 33 shall be exercised—

(a) by the Chairman in the case of officers and servants whose monthly salary shall not exceed rupees one hundred a month, and

(b) in every other case by the Commissioners in meeting.
¹Provided that any resolution passed by the Commissioners to dismiss or to reduce a Head of a Department shall not be carried into effect without the approval of the ²[Central Government].

37. (1) The Commissioners shall have the right and privilege of maintaining pilots, and shall be bound to maintain a sufficient number of pilots. Pilots.

(2) The Commissioners in meeting may from time to time make by-laws—

(a) for fixing and regulating the wages and allowances for pilotage to be received by pilots; and

(b) for regulating the duties, conduct and behaviour of pilots; and shall enforce the observance of such by-laws by the imposition of pecuniary penalties not exceeding one hundred rupees in respect of each offence or by suspension or deprivation of appointment, or otherwise, as may seem to them expedient.

(3) By-laws framed under this section shall not come into force until they have been confirmed by the ²[Central Government].

CHAPTER V.

GENERAL POWERS OF THE COMMISSIONERS.

Construction of Works, etc.

38. The Commissioners may construct and carry out the following works:— Works to be constructed.

(a) docks, wharves, quays, stages, jetties and piers with all necessary and convenient drains, arches, landing-places, stairs, fences and approaches;

(b) quarters and buildings for the residence of the Commissioners' officers;

¹The proviso was added by s. 4 of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

²See foot-note 2 on p. 477, ante.

[**Ben. Act V**

(Chapter V.—General Powers of the Commissioners.—Sec. 39.)

- (c) railways, tramways, warehouses, sheds, engines and other appliances for conveying, receiving and storing goods landed or to be shipped or carried, and places suitable for the sampling and selling of such goods;
- (d) the laying down of moorings, and the erection of cranes, scales and all other necessary appliances for loading and unloading vessels;
- (e) the reclamation, enclosing, raising and rivetting of any part of the bank or bed of the river;
- (f) the construction and application of dredgers and other machines for clearing, deepening and improving the bed of the river;
- (g) the procuring and employment of steam-vessels for towing vessels into, out of, in or upon the river, and for carrying passengers and their personal effects within or partly within and partly without the limits of the port;
- (h) the construction of such works within or without the limits of the port as shall be necessary for the protection of works executed under this Act;
- (i) the maintenance and improvement of any navigable channel which the ¹[Provincial Government] may ²with the previous sanction of the Central Government³ and by notification, place under the management of the Commissioners; and
- (j) all such other works and appliances as may, in the opinion of the Commissioners, be necessary for carrying out the provisions of this Act.

Port By-laws.

**Power to
Commissioners
to make port
by-laws.**

39. (1) The Commissioners in meeting may, subject to the conditions of previous publication, from time to time make by-laws consistent with the Indian Ports Act, 1908, and with this Act, for any of the following purposes (that is to say):—

XV of
1908.

- (a) for regulating, declaring and defining the docks, wharves, quays, stages, jetties and piers on and

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were inserted by s. 15 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

³The words "Central Government" were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1914.]

(Chapter V.—General Powers of the Commissioners.—Sec. 40.)

from which goods shall be landed from and shipped in, vessels within the port ;

- (b) for regulating the manner in which, and the conditions under which, the loading and discharging of all vessels within the port shall be carried out ;
- (c) for the safe and convenient use of such docks, wharves, quays, stages, jetties and piers, and of landing-places, tramways, warehouses, sheds and other works in and adjoining them ;
- (d) for regulating the reception and removal of goods within and from the premises of the Commissioners, and for declaring the procedure to be followed in taking charge of goods which may have been damaged before landing, or may be alleged to be so damaged ;
- (e) for regulating the mode of payment of tolls, dues, rates, duties and charges levied under this Act ;
- (f) for providing water for ships, and for licensing and regulating water-boats within the port ;
- (g) for the removal of wrecks from the port or the river, and keeping clean the port, the river, the bank of the river, and the works of the Commissioners, and for preventing filth and rubbish being thrown therein or thereon ;
- (h) for regulating the hours during which European seamen, and apprentices shipped on the same footing as European seamen, may be employed within the port on board ships, or on docks, wharves, quays, stages, jetties and piers in work necessitating exposure to the sun ; and
- (i) for otherwise carrying out the purposes of this Act.

(2) No by-law made under this section shall come into force until it has been confirmed by the ¹[Central Government].

Public Landing-places, etc.

40. The Commissioners shall provide a sufficient number of landing-places within the port from and upon which the public may be permitted to embark and land free of charge.

Free public
landing places.

¹See foot-note 2 on p. 477, *ante*.

(Chapter V.—General Powers of the Commissioners
—Secs. 41-43.)

Removal of
bathing-places
and landing-
places.

41. The Commissioners may occupy or remove or alter any bathing-place or landing-place in the port, and prohibit the public from resorting to or using such bathing-place or landing-place :

Provided that the Commissioners shall provide for the use of the public such other bathing-places or landing-places, if any, as the [Central Government] may by notification direct.

*Landing and Shipment of Goods, and Registration of
Cargo-boat traffic.*

Appliances
for shipment
and landing
in and from
sea-going
vessels.

42. For the expeditious and convenient landing and shipment of goods from and in sea-going vessels within the port, and for the storing of such goods, the Commissioners may provide and maintain sufficient docks, wharves, quays, stages, jetties, piers, warehouses and sheds, and sufficient servants and appliances, and may by their servants land and ship all goods from and in any such vessel coming to any such dock, wharf, quay, stage, jetty or pier, except where there is a lawful excuse for refusing to land or ship such goods, or such vessel is under any enactment for the time being in force, not entitled to have her cargo shipped or discharged :

Provided as follows :—

- (1) the Commissioners shall not be bound to land, ship or move any single article or package exceeding ten tons or twenty hundred-weights in weight, except at such special charge as may be agreed upon in respect of such article or package ;
- (2) the Commissioners may, by special arrangement with the masters of vessels or the owners of goods, permit goods to be landed or shipped by persons other than the officers and servants of the Commissioners.

Power to
Commissioners
to compel sea-
going vessels
to use docks,
wharves, etc.

43. (1) When the Commissioners or the Assam-Bengal Railway Company, as the case may be, have made and completed, abutting on the river and whether within or without the limits of the port, any dock, wharf, quay, stage, jetty or pier, together with sufficient warehouses, sheds and appliances

¹See foot-note 2 on p. 477, ante.

of 1914.]

(Chapter V.—General Powers of the Commissioners
—Secs. 44,45.)

for landing and shipping, or for landing or shipping, goods from and in sea-going vessels, the Commissioners may, with the previous sanction of the ¹[Central Government] by notification published in the ²[*Official Gazette*], declare that such dock, wharf, quay, stage, jetty or pier is ready for receiving, landing and shipping, or for landing or shipping, as the case may be, goods from and in sea-going vessels.

(2) From and after such publication, the Commissioners may from time to time, when there is room in or at such dock, wharf, quay, stage, jetty or pier, order to enter or come alongside of such dock, wharf, quay, stage, jetty or pier, whether for the purpose of landing and shipping goods or for landing or shipping the same, as the case may be, any sea-going vessel within the port which has not commenced to discharge cargo, or which, being about to take in cargo, has not commenced to take in cargo.

44 When the Commissioners or the Assam-Bengal Railway Company, as the case may be, have provided, as aforesaid, abutting on the river, a sufficient number of docks, wharves, quays, stages, jetties or piers, together with such number of warehouses, sheds and appliances as the Commissioners may deem necessary, the Commissioners may, with the previous sanction of the ¹[Central Government], by an order published in the ²[*Official Gazette*] direct that no goods shall be landed or shipped from or in sea-going vessels within the port, save at such docks, wharves, quays, stages, jetties and piers.

When all sea-going vessels may be compelled to use docks, wharves, etc.

45. When (1) the Commissioners or the Assam-Bengal Railway Company, as the case may be, have made and completed, abutting on the river, any dock, wharf, quay, stage, jetty or pier for receiving, landing or shipping goods from or in vessels, not being sea-going vessels, together with such number of warehouses, sheds and appliances as the Commissioners may deem necessary in that behalf, the Commissioners may, with the sanction of the ¹[Central Government] by an order published in the ²[*Official Gazette*] declare—

Power to Commissioners to compel inland vessels to use docks, wharves, etc.

(a) that such dock, wharf, quay, stage, jetty or pier is ready for receiving, landing or shipping goods from or in vessels, not being sea-going vessels, and

¹See foot-note 2 on p. 477, *ante*.

²See foot-note 3 on p. 482, *ante*.

[Ben. Act V

(Chapter V.—General Powers of the Commissioners.—Secs. 46, 47.)

(b) that, within certain proscribed limits within the port, to be specified in such order, it shall not be lawful—

(i) to land or ship any goods from or in any vessel, not being a sea-going vessel, of any class specified in such order, except at such dock, wharf, quay, stage, jetty or pier, or

(ii) for any such vessel, while within such limits, to anchor, fasten or lie, within fifty yards of low-water mark, without the consent of the Commissioners.

(2) If after such publication any such vessel, while within such limits, so anchors, fastens or lies, the Commissioners may cause the same to be removed out of the said limits.

Prior publication of notifications under sections 43, 44 and 45.

46. Before issuing any notification under section 43, or any order under section 44 or section 45, the Commissioners shall publish in the ¹[*Official Gazette*] a draft of the proposed notification or order, together with a notice specifying a date on or after which the draft will be taken into consideration; and shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

Tolls and charges in the case of railway jetties.

47. Before publishing a draft notification or order under section 46 in respect of any dock, wharf, quay, stage, jetty or pier belonging to the Assam-Bengal Railway Company, the Commissioners shall satisfy themselves that the scale of tolls, dues, rates and charges levied by the said railway—

(i) at or for the use of such dock, wharf, quay, stage, jetty or pier, or

(ii) for services to be performed thereat, or

(iii) for the use of works and appliances thereon,

has been duly sanctioned by the Railway Board under the powers conferred upon the said Board by or under section 2 of the Railway Board Act, 1905 ²[or, after the establishment IV of 1905. of the Federal Railway Authority by that Authority].

¹See foot-note 3 on p. 482, *ante*.

²These words were inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1914.]

(Chapter V.—General Powers of the Commissioners—
Secs. 48-51.)

48. (1) The Commissioners may, by notice in writing, order the master or owner of any vessel to remove such vessel from any dock, wharf, quay, stage, jetty or pier belonging to the Commissioners or to the Assam-Bengal Railway Company.

Power to Commissioners to order removal of vessels from docks, wharves, etc.

(2) Unless such vessel is removed therefrom within twenty-four hours after service of such notice on the master or owner thereof, the Commissioners may charge, in respect of such vessel, such sum as they think fit, not exceeding five hundred rupees for each day of twenty-four hours, or portion of such day after the expiry of such twenty-four hours, during which such vessel remains at such dock, wharf, quay, stage, jetty or pier.

49. Notwithstanding anything contained in this chapter, the ¹[Central Government] may, by notification from time to time permit certain specified vessels or classes of vessels to discharge or ship cargo, or certain specified cargo or classes of cargo, at such part of the port, in such manner, during such period, subject to such payments and on such conditions as the ¹[Central Government] may think fit, and otherwise grant exemption from any of the provisions of this chapter.

Power to Central Government to exempt from obligation to use docks, wharves, etc.

50. (1) Whenever any goods are landed by the Commissioners or by the Assam-Bengal Railway Company from any vessel, the Commissioners or the Assam-Bengal Railway Company, as the case may be, shall, if so required, give to the master of such vessel a receipt in the form or to the effect set forth in the Second Schedule to this Act, and may in any such receipt include all goods landed from such vessel during one day.

Discharge of liability on goods landed.

(2) No master or owner of a vessel from which the goods, in respect of which a receipt is given under sub-section (1), may have been landed shall be liable for any loss or damage, to such goods which may occur after they have been so landed.

51. ²[Where] under the provisions of any Act for the regulation of duties of Customs, any dock, wharf, quay, stage,

Accommodation for Customs officers on docks, wharves, etc.

¹See foot-note 2 on p. 477, *ante*.

²This word was substituted for the words "when the Local Government appoint" by s. 16 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

(Chapter V.—General Powers of the Commissioners.—Secs. 52-54.)

jetty, pier, warehouse or shed, provided under this Act for the use of sea-going vessels, ¹[is appointed] to be a dock or wharf for the landing or shipping, or a warehouse for the storing of goods within the meaning of such Act,

the Commissioners shall set apart, maintain and secure on or in such dock, wharf, quay, stage, jetty, pier, warehouse or shed such portion thereof, or place therein, or adjoining thereto, for the use of the officers of Customs as the ²[Central Government] may approve of or appoint in that behalf.

Dues at
Customs docks,
wharves, etc.

52. Notwithstanding that any dock, wharf, quay, stage, jetty, pier, warehouse or shed or portion thereof has, under the provisions of section 51, been set apart for the use of the officers of Customs, all dues, rates, tolls, charges and rents payable under this Act in respect thereof, or for the use thereof, or for the storage of goods therein, shall be paid and be payable to the Commissioners, or to such persons as they may appoint to receive the same.

Registration
of cargo-boat
traffic.

53. (1) The master of every vessel entering or leaving the port to which the provisions of the Sea Customs Act, 1878, in regard to entering or clearing at a Customs House, do not apply shall be bound to stop at one or other of the stations established by the Commissioners for the registration of river-borne traffic, and forthwith to make a full and true declaration of the nature and value of the cargo at the time being carried by him on such vessel.

VIII of
1878.

(2) No such master shall withdraw his vessel from any such station until he has received from the clerk in charge of the same a pass on which the particulars of the nature and value of the cargo so being carried shall be recorded.

Private Docks, Wharves, etc.

Prohibition of
private docks,
wharves, etc.

54. (1) Save as provided in section 55, no person except the Commissioners shall, after the commencement of this Act, make, erect or fix below high-water mark within the port any dock, wharf, quay, stage, jetty, pier, erection or mooring.

¹These words were inserted by s. 16 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

²See foot-note 2 on p. 477, *ante*.

of 1914.]

(Chapter V.—General Powers of the Commissioners.—Secs. 55-57).

Ben. Act
IV of 1887.

(2) Any matter or thing made, erected or fixed in contravention of the provisions of sub-section (1) or of section 30 of the Chittagong Port Commissioners Act, 1887,¹ may be removed by the Commissioners, and the person by whom the same is being or has been so made, erected or fixed shall be liable to pay all expenses which may be incurred by the Commissioners in such removal.

55. The Commissioners may, by an order in writing and subject to the conditions contained in the same, permit any person to make, erect or fix below high-water mark within the port, or abutting on the river, any dock, wharf, quay, stage, jetty, pier, erection or mooring.

Power to Commissioners to permit private docks, wharves, etc.

56. Any dock, wharf, quay, stage, jetty, pier, erection or mooring made, erected or fixed below high-water mark without the limits for the time being of the port and thereafter included within the said limits may be removed, filled up or destroyed by the Commissioners without payment of any compensation,

Docks, wharves, etc., beyond port limits.

unless such dock, wharf, quay, stage, jetty, pier, erection or mooring was made, erected or fixed—

- (i) prior to the twenty-fifth day of April, 1888, or
- (ii) with the consent in writing of the Commissioners constituted under the Chittagong Port Commissioners Act, 1887,¹ or
- (iii) with the consent in writing of the ²[Provincial Government].

Tolls and Charges.

57. (1) The Commissioners shall frame—

Scales of tolls and charges to be framed.

- ³[(a) a scale of tolls, dues, rates and charges, annual or other, to be paid by the owners of vessels plying, whether for hire or not and whether regularly or occasionally, within or partly within and partly without the limits of the port in respect of such vessels and of persons whether in charge of, or on board, such vessels, and also in respect of the licensing, registration and regulation of such vessels and persons :

Provided that no such tolls, dues, rates and charges shall be chargeable in respect of vessels which are liable to port dues under the provisions of Schedule I to the Indian Ports Act, 1908.]

XV of
1903.

¹Ben. Act IV of 1887 has been repealed by this Act, see Sch. I.

²See foot-note 1 on p. 490, ante.

³Clause (a) was inserted by s. 5 of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

[Ben. Act V

(Chapter V.—General Powers of the Commissioners.—Sec. 58.)

¹[(b)] a scale of tolls, dues, rates and charges—

- (i) for the landing and shipment of goods from and in sea-going vessels, and vessels not being sea-going vessels, respectively, at such docks, wharves, quays, stages, jetties and piers as belong to the Commissioners,
- (ii) for the use of such docks, wharves, quays, stages, jetties and piers by such vessels,
- (iii) for the storing and keeping of any goods stored in any premises belonging to the Commissioners,
- (iv) for the removal of goods, and
- (v) for the use of any mooring ;

¹[(c)] a scale of tolls for the use of the said docks, wharves, quays, moorings, stages, jetties and piers by any such vessels, in case the Commissioners permit the goods to be landed or shipped by persons other than their own officers and servants ; and¹[(d)] a scale of charges for—

- (i) any service to be performed by the Commissioners or their servants in respect of any vessels or goods,
- (ii) the use of any works or appliances to be provided by the Commissioners, and
- (iii) for the carrying of passengers and their personal effects on vessels belonging to, or hired by, the Commissioners.

(2) Such scales shall be submitted to the ²[Central Government], and, after, approval or modification by the ²[Central Government], shall be published in the ¹[Official Gazette].

(3) Every such scale shall be printed in the English and Bengali languages and characters, and shall be kept hung up in some conspicuous place at the several docks, wharves, quays, stages, jetties, piers, warehouses and sheds.

58. (1) The Commissioners may, with the previous sanction of the ²[Central Government] by notification impose a river-*due* on all goods landed from or shipped into any sea-going vessel lying or being within the limits of the port, whether such goods shall or shall not be so landed or shipped at any dock, wharf, quay, stage, jetty or pier belonging to the Commissioners.

Power to
Commissioners
to impose
river-*due* and
to alter the
rates thereof.

¹Existing clauses (a), (b) and (c) were re-lettered as clauses (b), (c) and (d), respectively, by s. 5 of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

²See foot-note 2 on p. 477, *ante*.

³See foot-note 3 on p. 482, *ante*.

of 1914.]

(Chapter V.—General Powers of the Commissioners.—Secs. 59, 60.)

1* * * * *

(3)² * * * * *, the Commissioners may, with the previous sanction of the ³[Central Government], from time to time, by notification, raise or reduce the rate to be imposed, whether generally or on any particular goods or class of goods.

(4) Before issuing any notification under this section, the Commissioners shall publish a draft of the same together with a notice specifying a date on or after which the draft will be taken into consideration ; and shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) Every notification under this section and every draft thereof shall be published in the ⁴[Official Gazette] and a copy of the notification, as finally settled, shall be printed in the English and Bengali languages and characters and shall be kept hung up at some conspicuous place to be appointed by the Commissioners.

59. ⁵[A customs duty shall be levied and collected by the Commissioners] on all jute exported by sea from the Port of Chittagong to any other port, whether beyond or within India, at such rate not exceeding,—

Power to Commissioners to levy customs duty on jute exported by sea.

(a) in the case of raw jute (including jute cuttings and rejections), two annas per bale of four hundred pounds, and

(b) in the case of manufactured jute, twelve annas per ton of two thousand two hundred and forty pounds,

as the ³[Central Government] may prescribe by notification :
Provided that no duty shall be leviable on raw jute exported from Chittagong to Calcutta.

⁶Provided further that the ³[Central Government] may, by notification, exempt from the levy of such duty jute shipped to any specified port in India.

60. (1) For the amount of all tolls, dues, rates, duties and charges leviable under this Act in respect of any goods, the

Commissioners' lien for tolls and charges.

¹Sub-section (2) was omitted by the Chittagong Port (Amendment) Act, 1918 (Ben. Act V of 1918).

²The words " Subject to the limits enacted by sub-section (2) " were omitted, *ibid*.

³See foot-note 2 on p. 477, *ante*.

⁴See foot-note 3 on p. 482, *ante*.

⁵These words were substituted for the words " The Commissioners may levy and collect a customs duty " by s. 6 (a) of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

⁶The proviso was added by s. 6 (b), *ibid*.

(Chapter V.—General Powers of the Commissioners.—Secs. 61, 62.)

Commissioners shall have a lien on such goods, and shall be entitled to seize and detain them until such tolls, dues, rates, duties and charges are fully paid.

(2) Tolls, dues, rates, duties and charges in respect of goods to be landed shall become payable immediately on the landing of the goods, and, in respect of goods to be removed from the premises of the Commissioners or to be shipped for export, shall be payable before the goods are removed or shipped.

(3) The lien provided in sub-section (1) for such tolls, dues, rates, duties and charges shall have priority over all other liens and claims, except—

(a) a lien for freight, primage and general average where such lien has been preserved in the manner hereinafter provided, and

(b) a lien for money payable ¹[to the Crown] under any law for the time being in force.

Shipowner's
lien for freight.

61. (1) If the master or owner of any vessel, at or before the time of landing from such vessel of any goods at any dock, wharf, quay, stage, jetty or pier, gives to the Commissioners notice in writing that such goods are to remain subject to a lien for freight, primage or general average of an amount to be mentioned in such notice, such goods shall continue liable after the landing thereof to such lien.

(2) Such goods shall be retained either in the warehouses or sheds of the Commissioners, or, with the consent of the ²[Customs-Collector] of the Port in the public warehouses, at the risk and expense of the owners of the said goods, until the lien is discharged in the manner provided by section 62.

Discharge of
shipowner's
lien for freight.

62. Upon the production to any officer appointed by the Commissioners in that behalf of a document purporting to be a receipt for, or a release from, the amount of such lien, executed by the person by or on whose behalf such notice has been given, the Commissioners may permit such goods to be removed without regard to such lien :

¹These words were substituted for the words "to His Majesty or to the Secretary of State for India in Council" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This word was substituted for the words "Collector of Customs" by s. 17 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

of 1914.]

(Chapter V.—General Powers of the Commissioners,—
Secs. 63. 64.)

Provided that they shall, in every case, use reasonable care in respect to the authenticity of such document.

63. (1) Whenever goods have, without any default on the part of the Commissioners, been left for two clear days on or in any wharf or shed belonging to the Commissioners, the Commissioners may cause such goods to be removed either to any warehouse belonging to them, or, with the consent of the ¹[Customs-Collector] of the port, to the public warehouses, and the removal and detention in any such warehouse shall be at the risk and expense of the owners of the said goods.

Power to Commissioners to remove goods to warehouses.

(2) Whenever any goods are so removed, the Commissioners shall give notice to the consignee or owner of such goods of such removal, if his address be known, by letter sent by post to such address, or left thereat; and shall also publish in the ²[Official Gazette], and in one more local newspapers (if any), notice of such removal, and shall specify therein the numbers, marks and descriptions of such goods so far as the same appear.

(3) The consignee or owner of such goods, in addition to the expenses of their removal, shall be liable,—

- (a) in case the goods are removed to any warehouse of the Commissioners, to a charge for warehousing for the time during which the goods shall remain in the said warehouse; or,
- (b) in case the goods are removed to the public warehouses, to the charge for warehousing goods in such warehouses.

(4) If such goods are removed to the public warehouses, the said goods shall remain subject to all liens to which they would have been liable if they had remained in the possession of the Commissioners, and shall be subject to the power of sale mentioned in section 64.

64. (1) If the tolls, dues, rates, duties and charges payable to the Commissioners in respect of any goods under this Act are not paid, or,

if the lien for freight, primage or general average, where such notice as aforesaid has been given, is not discharged,

Recovery by Commissioners of tolls and charges by sale of goods.

¹See foot-note 2 on p. 500, *ante*.

²These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter V.—General Powers of the Commissioners.—Sec. 65.)

the Commissioners may, and in the latter event, if required by or on behalf of the person claiming such lien for freight, primage, or general average, shall, at the expiration of four months from the time when the goods were placed in their custody, sell by public auction the said goods or so much thereof as may be necessary to satisfy the amounts directed in section 65 to be paid out of the proceeds of such sale.

(2) Before making such sale, ten days' notice shall be given by publication thereof in the ¹[*Official Gazette*] and in one or more local newspapers (if any).

(3) If the address of the owner of the goods has been stated on the manifest of the cargo, or in any of the documents which have come into the hands of the Commissioners, or is otherwise known, notice shall also be given to the owner of the goods by letter delivered at such address or sent by post.

(4) Notwithstanding anything contained in sub-section (1), sub-section (2) or sub-section (3), if such goods are of so perishable a nature as, in the opinion of the officer appointed by the Commissioners in that behalf, to render early or immediate sale necessary or advisable, the Commissioners may, within such period not less than twenty-four hours after the landing of the goods as they think fit, sell by public auction the said goods or such portion of them as aforesaid, in which event such notice, if any, shall be given to the owner of the goods as the urgency of the case admits of.

(5) The title of a *bona fide* purchaser of goods sold under this section shall not be invalidated by reason of any omission to give or send the notice prescribed by sub-section (3) or sub-section (4), nor shall any such purchaser be bound to inquire whether such notice has been sent or given.

Application
of sale-pro-
ceeds.

65. (1) The proceeds of every such sale shall be applied as follows :—

- (a) in payment of the expenses of the sale ;
- (b) in payment, according to their respective priorities, of the liens and claims excepted in this chapter from the priority of the lien of the Commissioners ;
- (c) in payment of the tolls, dues, rates and charges of landing, removing, storing or warehousing the

¹See foot-note 2 on p. 501, *ante*.

of 1914.]

(Chapter V.—General Powers of the Commissioners.—Secs. 66, 67.)

goods, and of all duties or other charges due to the Commissioners in respect thereof.

(2) The surplus, if any, shall be paid to the importer, owner or consignee of the goods, or to his agents, on his applying for the same :

Provided that such application is made within one year from the sale, or reason is shown to the satisfaction of the Commissioners why such application was not so made ;

and in case such application shall not be so made, nor reason shown, such surplus shall be held by the Commissioners upon trust for the purpose of this Act.

66. If the master of any vessel, in respect of which any tolls, dues, rates, charges or penalties are payable under this Act, or any by-laws or orders made in pursuance thereof, refuses or neglects to pay the same, or any part thereof, on demand, the Commissioners may apply to the ¹[Customs-Collector] of the port ;

Recovery by Commissioners of tolls and charges by distraint to vessel.

and such Collector shall distrain or arrest such vessel and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Commissioners is paid ;

and in case any part of the said tolls, dues, rates, charges or penalties, or of the costs of distress or arrestment, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrestment has been so made, the ¹[Customs-Collector] of the port may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale shall satisfy such tolls, dues, rates, charges or penalties and costs, including the costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

67. If the Commissioners give to the officer of Government, whose duty it is to grant the port-clearance of any vessel, a notice stating that an amount therein specified is due in respect of tolls, dues, rates, duties, charges or penalties chargeable under this Act, or any rules or orders made in pursuance

Port-clearance not to be granted until tolls, etc., are paid.

¹See foot-note 2 on p. 500, *ante*.

(Chapter V.—General Powers of the Commissioners.—Sec. 68.)

thereof against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel,

such officer shall not grant such port-clearance until the amount so chargeable has been paid.

Compensation for damage to Port property.

Compensation
for damage to
property of
Commissioners.

68. (1) In case any damage or mischief is done to any docks, wharves, quays, jetties, stages, piers or works constructed or acquired by the Commissioners under this Act by any vessel, through the negligence of the master thereof, or of any of the mariners or persons employed therein, any Magistrate of the town of Chittagong may, on the application of the Commissioners, and on declaration by them that payment for such damage or mischief has been refused or has not been made on demand, issue a summons to the master or owner of such vessel, requiring him to attend on a day and at an hour named in the summons to answer touching such damage or mischief :

Provided that, if at the time of the damage or mischief, the vessel was under the orders of a duly-authorised officer belonging to the Pilot Service, or the Harbour-master's department, as the case may be, the case shall not be cognizable by the Magistrate under this section.

(2) If at the time appointed in the summons, and whether the person summoned appears or not, it is proved that the alleged damage was done through such negligence as aforesaid, and that the pecuniary amount of the same does not exceed five hundred rupees,

the Magistrate may issue his warrant of distress, under which a sufficient portion of the boats, masts, spars, ropes, cables, anchors or stores of the vessel may be seized and sold to cover the expenses of and attending the execution of the distress, and the pecuniary amount of damage as aforesaid,

and such amount shall be paid to the Commissioners out of the proceeds.

of 1914.]

(Chapter VI.—Property of the Commissioners.—Secs.
69-71.)

CHAPTER VI.

Property of the Commissioners.

69. The Commissioners may, for the purposes of this Act, acquire and hold movable and immovable property within or without the limits of the port; Power to Commissioners to hold and dispose of property.

and may lease, mortgage, sell or exchange such property :

Provided that no sale of immovable property and no lease or alienation thereof for a term exceeding ten years shall be valid unless such sale, lease or alienation shall have been made with the previous sanction of the ¹[Central Government].

70. The property specified in the Third Schedule shall be vested in the Commissioners, and shall be held by them subject to the provisions of this chapter. Property vested in the Commissioners.

71. (1) If any portion of the property specified in Part I of the Third Schedule, or which may have been transferred by the ²[Provincial Government] to the Commissioners after the 1st day of July, 1914, or which may hereafter be so transferred, otherwise than in exchange for its market value, is required by the ³[Provincial Government] for a public purpose, it may be resumed by that Government, with the previous sanction of the ⁴[Central Government], without claim to compensation on the part of the Commissioners, except— Resumption of property by Government.

- (a) for the amount of any consideration or other payment made in respect of the transfer to the Commissioners of the property to be resumed,
- (b) for the cost of revetment and other works for the protection of the property to be resumed, effected by the Port Commissioners or their lessees subsequent to the transfer, and
- (c) for the cost of buildings and other permanent structures on the property to be resumed, erected by the Commissioners or their lessees, subsequent to the transfer :

¹See foot-note 2 on p. 477, *ante*.

²This section was substituted by s. 18 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928.)

³See foot-note 1 on p. 490, *ante*.

(Chapter VI.—Property of the Commissioners.—Sec.
72.)

Provided that—

- (i) the compensation to be awarded under clause (b) shall not in any case exceed the market value of the land to be resumed at the time of the resumption ; and
- (ii) the compensation to be awarded under clause (c) shall be either the original cost of the building or structure or the market value thereof at the time of the resumption, whichever is less.

(2) If any question arises between the Commissioners and the ¹[Provincial Government] as to the boundaries of any portion of the land specified in Part I of the Third Schedule, or which may have been transferred by the ¹[Provincial Government] to the Commissioners after the 1st day of July, 1914, or which may hereafter be so transferred, otherwise than in exchange for its market value, the ¹[Provincial Government] may define and demarcate such boundaries, and submit the case for the orders of the ²[Central Government], whose decision shall be final.

(3) If any question arises as to the adequacy of the compensation proposed to be paid under clause (a), clause (b) or clause (c) of sub-section (1), the ¹[Provincial Government] shall submit a report to the ²[Central Government] whose decision shall be final.

(4) If any question arises as to the necessity of the resumption of any land under this section, or as to the relative importance of such land to the ¹[Provincial Government] and to the Commissioners, the ¹[Provincial Government] shall submit a statement of the case to the ²[Central Government] whose decision shall be final.

**Acquisition of
land.**

72. When any land is required for the purpose of this Act, the ¹[Provincial Government] may, on the request of the Commissioners, proceed to acquire it under the provisions of the Land Acquisition Act, 1894 ; and, on payment by the Commissioners of the compensation awarded under this Act and of the charges incurred by the ¹[Provincial Government] in connection with the proceedings, the land shall vest in the Commissioners. I of 1814.

¹See foot-note 1 on p. 490, *ante*.

²See foot-note 2 on p. 477, *ante*.

of 1914]

(Chapter VI.—Property of the Commissioners.—Chapter VII.—Borrowing Powers.—Secs. 73-76.)

73. All property vested in, or acquired or held by, and all moneys paid or payable to the Commissioners, shall be held and applied by them in trust for the purposes of this Act.

Property to be in trust.

CHAPTER VII.

BORROWING POWERS.

74. The Commissioners may, ¹[with the previous sanction of the Central Government² and after notification in the *Official Gazette*³] raise money required for the carrying out of works which they are authorised by this Act to carry out, or for the general purposes of this Act, or for the purpose of repaying, either in whole or in part, any moneys heretofore or hereafter borrowed or owing by the Commissioners :

Power to Commissioners to borrow.

* * * * *

75. All loans raised under this Act shall be raised on the security of—

Security for¹ moneys raised under this Act.

- (a) the property now vested, or which may hereafter become vested, in the Commissioners; and
- (b) the tolls, dues, rates, rents and charges leviable under this Act, less any sums set apart by the Commissioners as a sinking fund for the purpose of paying off a loan.

76. (1) All debentures issued under this Act shall be in such form as the Commissioners shall from time to time determine ;

Form and transferability of debentures, and the rights of Government and of debenture-holders.

Provided that, in the case of loans raised out of India, the form of the debentures shall require the previous sanction of the Central Government.²

(2) The holder of any debenture in any form duly authorised under this section may obtain in exchange therefor, upon

¹These words were substituted for the words "after notification in the *Calcutta Gazette*" by s. 19 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

²The words "Central Government" were substituted for the words "Governor-General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "*Official Gazette*" were substituted for the words "*Gazette of India*," *ibid.*

⁴The provisos were omitted by the Chittagong Port (Amendment) Act, 1928 (XI of 1928.)

[Ben. Act V

(Chapter VII.—Borrowing Powers.—Secs. 77, 78.)

such terms as the Commissioners shall from time to time determine, a debenture in any other form so authorised.

(3) Every debenture issued by the Commissioners shall be transferable in such manner as shall be therein expressed.

(4) All coupons attached to debentures issued under this Act shall bear the signature of the Chairman or Vice-Chairman, and such signature may be engraved, lithographed or impressed by any mechanical process.

(5) The right to sue in respect of moneys secured by such debentures shall be exercisable by the holders thereof for the time being, without any preference by reason of some of such debentures being prior in date to others.

(6) The ¹[Crown] shall have, in respect of all loans made by ²[it] to the Commissioners, the same remedies as debenture-holders; but ³[it] shall not be deemed to possess any prior or greater rights in respect of such loans than debenture-holders.

Loans a first charge.

77. All loans contracted under the Chittagong Port Commissioners Act, 1887¹, or under this Act, and repayable by the Commissioners, shall be a first charge on the income of the Commissioners and on the property now vested, or which hereafter may become vested, in the Commissioners.

Ben. Act
IV of 1887.

Establishment of sinking fund.

78. (1) In respect of every loan raised by the Commissioners after the passing of this Act, for a term exceeding one year (except a loan taken from the Secretary of State for India in Council ⁴[or any Government]), the Commissioners shall provide a sinking fund. Payments shall be made half-yearly to such sinking fund, and such payments shall be of such amounts as will be sufficient to liquidate the loan within a period which shall not exceed thirty years or, with the previous sanction of the ⁵[Central Government], sixty years.

(2) The Commissioners may apply the whole or any part of the sums accumulated in the sinking fund in or towards the discharge of the moneys for the repayment of which the fund has been established, provided that they pay into the fund in each year, and accumulate until the whole of the moneys

¹This word was substituted for the words "Secretary of State for India in Council" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This word was substituted for the word "him" by paragraph 5 (2), *ibid.*

³This word was substituted for the word "he", *ibid.*

⁴Ben. Act IV of 1887 has been repealed by this Act, *see* Sch. I.

⁵These words were inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶*See* foot-note 2 on p. 477, *ante*.

of 1914.]

(Chapter VII.—Borrowing Powers.—Secs. 79-81.

borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund, or the part of the sinking fund so applied.

(3) The sums so set apart as a sinking fund shall be invested in securities of the ¹[Central Government] or in the Commissioners' debentures, or in such other securities as the ²[Central Government] may approve in this behalf, and shall be held in trust for the purposes of this Act by two trustees, one being the Commissioners and the other a person appointed by the ³[Central Government].

79. (1) The sinking fund established for the liquidation of any loan shall be subject to annual examination by the Accountant-General, Bengal, who shall ascertain whether the cash and the current value of the securities at the credit of the fund are actually equal to the amount which would have accumulated had investments been regularly made, and had the rate of interest as originally estimated been obtained thereon.

Annual examination of sinking fund.

(2) The Commissioners shall forthwith pay into the sinking fund any amount which the Accountant-General may certify to be deficient, unless the ²[Central Government] specially sanctions a gradual re-adjustment.

80. The Commissioners may apply any sums which can be so applied without prejudicing the security of the other debenture-holders of the Commissioners in repaying to ³[any Government] any sum which may remain due to ⁴[it] in respect of the principal of any loans, although the time fixed for the repayment of the same may not have arrived :

Power to Commissioners to repay loans to Government before due date.

Provided as follows :—

- (1) no such repayment shall be made of any sum less than five thousand rupees ;
- (2) if such repayment is made, the amount of interest in each succeeding instalment shall be adjusted so as to represent exactly the interest due on the outstanding principal.

81. The unexpended balance, if any, of any loan raised for the carrying out of works shall,

Disposal of unexpended balances.

- (1) in the case of loans made by ³[any Government], be repaid, and the principal of the debt correspondingly reduced ; and

¹These words were substituted for the words "Government of India" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 2 on p. 477. *ant.*

³These words were substituted for the words "the Secretary of State for India in Council" by Sch. IV of the Government of India (Adaptation of Indian Laws), Order, 1937.

⁴This word was substituted for the word "him" by paragraph 5 (2), *ibid.*

(Chapter VII.—*Borrowing Powers*.—Chapter VIII.—*Disposal of Funds*.—Secs. 82, 83.)

(2) in the case of loans raised in the open market, unless the application of such unexpended balance to other capital expenditure be sanctioned by the authority which sanctioned the raising of the loan,—

- (a) be utilised in purchasing in the open market, and cancelling, debentures issued by the Commissioners, or
- (b) be paid into the sinking fund established for the liquidation of such loan.

CHAPTER VIII.

DISPOSAL OF FUNDS.

Banking of moneys.

82. (1) Except as provided in section 83, all moneys raised by and paid to the Commissioners under this Act shall be kept in such bank or banks as may be selected by the Commissioners in meeting subject to the previous approval of the ¹[Central Government]:

Provided that any surplus moneys not immediately required for the purposes of this Act, but which may be so required after such a short period as would, in the opinion of the Commissioners, prevent an advantageous investment thereof under the provisions of section 83 may from time to time, with the sanction of the ¹[Central Government], be deposited by the Commissioners on interest in any bank or banks ²* * selected for that purpose by the Commissioners.

(2) No portion of any funds kept or deposited in any bank under sub-section (1) shall be withdrawn from such bank except under the signature of the Chairman or Vice-Chairman.

Investment of balances and special funds.

83. The Commissioners may invest —

- (i) any balance remaining on the 31st March of each year to the credit of any account kept by them, after meeting all the charges properly debitable to such account; and

¹See foot-note 2 on p. 477, *ante*.

²The words "in Chittagong" were omitted by s.7 of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

of 1914.]

(Chapter VIII.—Disposal of Funds.—Sec. 84.)

- (ii) any moneys set aside for any special purpose or for the maintenance of any approved fund considered desirable by them,

in securities of the ¹[Central Government], ^{2*} * * * or in such other securities as the ³[Central Government] may approve in this behalf; and may from time to time sell the said securities and invest the proceeds in other such securities, or credit the same to the account to which the moneys invested belonged for expenditure on any of the purposes to which moneys credited to such account may lawfully be applied:

Provided that the amount so invested by the Commissioners in respect of any account shall not exceed such amount, annually or in the aggregate, as may be prescribed by the ³[Central Government]:

84. The moneys belonging to the Commissioners shall be applied by them in payment of the following charges, and, in the case of a deficiency of assets, such charges shall rank as against the fund of the Commissioners and be paid in the following order, namely:—

Application of moneys.

- (1) the interest and instalments of capital due in respect of any loan that may have been raised by the Commissioners or for the repayment of which the commissioners may be liable;
- (2) the salaries, fees, allowances, pensions, gratuities, compassionate allowances or other moneys due to—
 - (i) the Chairman and the Commissioners,
 - (ii) the officers and servants appointed or maintained under this Act or lent to the Commissioners, and
 - (iii) the surviving relatives, if any, of such officers and servants;

and the contributions, if any, payable ⁴[to any Government] on account of the pension and leave allowance of any officer lent to the Commissioners ⁵[by that Government] and the contributions, if any, duly authorised to be made to any

¹See foot-note 1 on p. 509, *ante*.

²The words "or in fixed deposit with the Bank of Bengal" were omitted by s. 8 of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

³See foot-note 2 on p. 477, *ante*.

⁴These words were substituted for the words "to Government" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words "by Government", *ibid*.

(Chapter VIII.—Disposal of Funds.—Sec. 84.)

provident or annuity fund by by-laws made under this Act ;

- (3) any charges for which the Commissioners may be liable under sections 99 and 100 ;
- (4) such sum as ¹[may be required] under section 85 for the establishment and maintenance of police for the protection of the port and the approaches thereto ;
- (5) if the Commissioners are appointed by a notification of the ²[Provincial Government] to exercise the powers and perform the duties specified in section 36, sub-section (1), of the Indian Ports Act, 1908, any other payment or expenditure mentioned in sub-section (5) of that section which the ³[Central Government] may direct the Commissioners to make or incur ; XV of 1908.
- (6) the cost of repairs and maintenance of the property vested in the Commissioners, and all charges upon the same and all working expenses ;
- (7) the cost of the construction and carrying out of any of the works specified in section 38 ; ^{1*}
- (8) any other charge which may be specially sanctioned by the ³[Central Government] for which the Commissioners may be legally liable ; ⁵[and
- ⁵(9) contributions to any welfare funds which may be established for the benefit of the officers and servants of the Commissioners :

Provided that any contribution to a welfare fund established for the benefit of officers and servants drawing not less than two hundred and fifty rupees a month shall not exceed the amount accruing from the following sources, viz :—

- (i) fines realised from such officers and servants ;
- (ii) unclaimed salary of such officers and servants ; and
- (iii) forfeitures of contributions to the provident fund in respect of such officers and servants.]

¹These words were substituted for the words "the Local Government may from time to time, require," by s. 20 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

²See foot-note 1 on p. 490 *ante*.

³See foot-note 2 on p. 477, *ante*.

⁴The word "and" was omitted by s. 9 of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

⁵The word "and" and clause (9) in square brackets were inserted by s. 9 of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

of 1914.]

(Chapter VIII.—Disposal of Funds—Chapter IX.—
Estimates and Accounts.—Secs. 85-87.)

85. The Commissioners shall provide such sums as the ¹[Central Government² and the Provincial Government³ may, from time to time, agree upon as a reasonable] contribution for the establishment and maintenance of police to be called "Port Police" for the protection of the port and the approaches to the port. Cost of Port Police.

CHAPTER IX.

ESTIMATES AND ACCOUNTS.

86. (1) The Chairman shall, at a special meeting to be held in the month of February in each year, lay before the Commissioners an estimate of the income and of the expenditure of the Commissioners for the year commencing on the first day of April next ensuing, in such detail and form as the Commissioners may, subject to the approval of the ⁴[Central Government] from time to time, direct. Annual estimate to be prepared and considered.

(2) To such estimate there shall be added—

- (i) an appendix containing particulars of all new works covered by the estimates and of the estimated cost of the same; and
- (ii) the schedule of officers and servants sanctioned under section 33.

(3) Such estimate shall be completed and a copy thereof sent by post or otherwise to each Commissioner at least seven clear days prior to the meeting before which the estimate is to be laid.

(4) The Commissioners shall consider the estimate so submitted to them, and shall pass the same unaltered or subject to such alterations as they may think fit.

87. (1) A copy of the estimate, as passed by the Commissioners, shall be submitted for approval to the ⁴[Central Government], and the ⁴[Central Government] may, if ⁵[it³ thinks] fit, approve or disallow such estimate or any portion thereof, and return the same for amendment at any time within one month of the receipt thereof. Submission and publication of estimate.

¹These words were substituted for the words "Local Government may from time to time require as their" by s. 21 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

²See foot-note 2 on p. 507, *ante*.

³The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴See foot-note 2 on p. 477, *ante*.

⁵These words were substituted for the words "they think" by s. 22 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

⁶The word "it" was substituted for the word "he" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter IX.—Estimates and Accounts.—Secs. 88-91.)

(2) The Commissioners shall, if the estimate is so returned by the ¹[Central Government], forthwith proceed to amend the same, and shall resubmit the estimate so amended for approval to the ¹[Central Government].

(3) A copy of the estimate, as passed by the Commissioners, and a copy of the estimate as finally approved by the ¹[Central Government], shall be open to the inspection of the public at the office of the Commissioners during office hours on payment of one rupee for each inspection.

(4) An abstract of the estimate, as finally approved by the ¹[Central Government], shall be published in the ²[Official Gazette].

Supplementary estimates.

88. (1) The Commissioners may, at any time during the year for which such estimate has been sanctioned, cause a supplementary estimate to be prepared and submitted to them.

(2) Every such supplementary estimate passed by the Commissioners shall be submitted for approval to the ¹[Central Government] in the same manner, and the provisions of section 87 shall apply to it, as if it were an original annual estimate.

Reappropriation of amounts in estimate.

89. Subject to any directions which the ¹[Central Government] may give in this behalf, any sum of money, or part thereof, of which the expenditure has been authorised in an estimate sanctioned under the foregoing provisions, and which has not been so spent, may at any time be reappropriated by the Commissioners to meet any excess in any other expenditure authorised in the said estimate :

Provided that the total amount of expenditure sanctioned by such estimate, as passed by the Commissioners and approved by the ¹[Central Government], shall not be exceeded without the sanction of the ¹[Central Government].

Prohibition of expenditure not provided for in estimates.

90. Save in cases of pressing emergency, no sum shall be expended by or on behalf of the Commissioners, unless such expenditure is provided for in an estimate sanctioned under this chapter and at the time in force, or by a reappropriation amending such estimate passed by the Commissioners under section 89.

Report of exceptional expenditure to Central Government.

91. If any sum exceeding a total in the year of two thousand five hundred rupees shall be so expended in cases of pressing emergency, the circumstances shall be reported by the Chairman to the ¹[Central Government], together with an explanation of the way in which it is proposed by the Commissioners to cover such expenditure.

¹See foot-note 2 on p. 477, ante.

²See foot-note 3 on p. 482, ante.

of 1914.]

(Chapter IX.—*Estimates and Accounts.*—Chapter X—*Control of Government.*—Secs. 92-96.)

92. No expenditure shall be charged by the Commissioners to capital account, except with the sanction of the ¹[Central Government]. Capital expenditure.

93. The accounts of the Commissioners shall be examined and audited in such manner as the ¹[Central Government] may direct. Audit of accounts.

94. (1) The Commissioners shall annually, or oftener if directed by the ¹[Central Government] so to do, submit statements of their receipts and disbursements in such form and at such time as the ¹[Central Government] may direct. Submission of accounts to Central Government.

(2) A copy of all such statements shall be open to the inspection of the public at the office of the Commissioners during office hours on payment of one rupee for each inspection.

CHAPTER X.

CONTROL OF GOVERNMENT.

95. All acts and proceedings of the Commissioners shall be subject to the control of the ¹[Central Government] and the ¹[Central Government] may— Control of Central Government over Commissioners' acts and proceedings.

- (i) cancel, suspend or modify any such acts or proceedings,
- (ii) grant exemptions from the payment of any tolls, charges, dues or rates leviable under this Act, and
- (iii) direct what acts and proceedings of the Commissioners shall be submitted, and in what form.

96. The Commissioners shall annually, or oftener if directed by the ¹[Central Government] so to do, submit in such form and at such time as the ¹[Central Government] may direct, reports of all works executed and proceedings taken by them under this Act. Annual and other reports.

¹See foot-note 2 on p. 477, *ante*.

(Chapter X.—Control of Government.—Secs. 97, 98.)

Power to Central Government to insist on imposition or increase of rates, etc.

97. (1) If at any time it appears to the ¹[Central Government] that sufficient provision is not being made by the Commissioners to meet their liabilities, the ¹[Central Government] may require the Commissioners to make such provision in either or both of the following ways, namely :—

- (a) by increasing, subject to the sanction of the ¹[Central Government], to such extent and for such period as may appear necessary, the rates or any of the rates for the time being in force under section 57, or
- (b) by exercising, subject to the like sanction, all or any of the powers conferred by section 58 with reference to all or any goods referred to in that section.

(2) If within one month after receipt of a requisition under clause (a) of sub-section (1), the Commissioners do not comply with the same, the ¹[Central Government] may, by notification, increase the said rates or any of them, and the rates imposed by such notification shall have the same force and effect as a scale of rates framed, sanctioned and published under section 57.

(3) If the Commissioners do not forthwith comply with a requisition under clause (b) of sub-section (1), the ¹[Central Government] may, by notification, impose or increase any river-due on all or any goods referred to in section 58, and the river-due so imposed or increased shall have the same force and effect as a river-due imposed, sanctioned and published under section 58.

Power to Central Government to require modification of scales.

98. (1) If at any time it appears to the ¹[Central Government] that any scale framed and published under section 57 should be modified, the ¹[Central Government], may call upon the Commissioners to modify such scales accordingly.

(2) If within two months after receipt of a requisition under sub-section (1) the Commissioners do not make the modification required by the ¹[Central Government], the ¹[Central Government] may, by notification, make such modification, and the scale so modified shall have the same force and effect as a scale framed and published under section 57 :

¹See foot-note 2 on p. 477, *ante*.

of 1914.]

(Chapter X.—Control of Government.—Secs. 99-101.).

Provided that before issuing such notification the ¹[Central Government] shall receive and consider any objection or suggestion which may be made by the Commissioners within two months after receipt of the requisition under sub-section (1).

99. The ¹[Central Government] may at any time order a survey and examination of any works of the Commissioners under this Act, or of the site thereof, and the cost of such survey or examination shall be borne and paid by the Commissioners.

Power to
Central
Government to
order survey.

100. If the Commissioners allow any work acquired or constructed by them under this Act to fall into disrepair, or do not complete any work commenced by them or duly estimated for and sanctioned,

Power to
Central
Government to
carry out
neglected works.

and do not, after notice given by the ¹[Central Government] in writing, proceed effectually to repair or complete such work,

the ¹[Central Government] may cause such work to be restored, completed or constructed, and the cost thereof shall be borne and paid by the Commissioners.

101. (1) If at any time the ¹[Central Government] ²[is] satisfied that the purposes intended to be accomplished under this Act have not been and are not likely to be properly accomplished by the Commissioners, the ¹[Central Government] may, by notification, give notice that, unless within six months the Commissioners take measures to the satisfaction of the ¹[Central Government] for properly accomplishing such purposes, the powers by this Act conferred on the Commissioners will, at the end of such period, be withdrawn and revoked.

Power to
Central
Government to
revoke powers
of Commissioners.

(2) On the expiration of the period aforesaid, the ¹[Central Government] may, if no such measures to ³[its] satisfaction have been taken by the Commissioners, declare such powers to be withdrawn or revoked, and may assume such powers, and thereupon such powers shall be withdrawn and revoked accordingly, and all the powers, rights and authorities and all the property vested in or held by the Commissioners for the purposes of this Act shall thereupon vest in the ¹[Central Government].

¹See foot-note 2 on p. 477, *ante*.

²This word was substituted for the word "are" by s. 23 of the Chittagong Port (Amendment) Act, 1928 (XI of 1928).

³This word was substituted for the word "his" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[**Ben. Act V***(Chapter XI.—Penalties and Procedure.—Secs. 102-104.)*

CHAPTER XI.

PENALTIES AND PROCEDURE.

Unlawful
interest of
Commissioner
in contracts or
employment.

102. Any Commissioner who, save as provided in section 12, acquires or agrees to acquire, directly or indirectly, any share or interest in any work done by order or on behalf of the Commissioners, or in any contract or employment with, by or on behalf of the Commissioners shall, in addition to the disqualification provided for under section 12, be punished with fine which may extend to five hundred rupees.

Unlawful
interest of
officer or servant
in contracts or
employments.

103. Any officer or servant of the Commissioners who directly or indirectly—

- (a) otherwise than as a debenture-holder, lends money to the Commissioners, or
- (b) becomes pecuniarily interested in any contract made by or on behalf of the Commissioners, or
- (c) participates or agrees to participate in any profits of any work done by order of or on behalf of the Commissioners,

shall be punished with fine which may extend to five hundred rupees :

Provided that nothing in this section shall apply to any officer or servant of the Commissioners by reason only of his being a shareholder in or member of any company (registered under the provisions of any Act for the registration of joint-stock companies passed by ¹[any Legislature in India] or by the Parliament of the United Kingdom, or incorporated by Act of Parliament, Royal Charter, or otherwise) which may lend money to, contract with, or be employed by or on behalf of the Commissioners.

Infringement
of by-laws,
orders, etc.

104. Whoever infringes any by-law made by the Commissioners under section 39, or any order issued by them under sections 43, 44 or 45, or any condition prescribed under section 49 or 55, or the direction contained in section 53 or the prohibition contained in section 54, shall be punished with fine which

¹These words were substituted for the words "any Indian Legislature" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1914.]

(Chapter XI.—Penalties and Procedure.—Chapter XII.—
Miscellaneous.—Secs. 105-109.)

may extend to one hundred rupees ; and, if the infringement be continuing, with a further fine, which may extend to one hundred rupees for every day after notice of such infringement has been given by the Commissioners.

105. Prosecutions under this Act may be instituted by the Commissioners or by any person authorised by them in this behalf by name or by virtue of his office, and not otherwise.

Prosecutions.

CHAPTER XII.

MISCELLANEOUS.

Act XLV
of 1880.

106. Every Commissioner, and the officers and servants of the Commissioners, other than artisans, porters and labourers, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Commissioners,
etc., to be
public servants.

107. No Commissioner shall be personally liable for any contract made or expense incurred by or on behalf of the Commissioners, but the funds from time to time in the hands of the Commissioners shall be liable for, and chargeable with, all contracts made in manner provided by this Act.

Exemption of
Commissioners
from personal
liability.

108. Every Commissioner shall be liable for any misapplication of money entrusted to the Commissioners, to which he has been a party, or which happens through, or is facilitated by, his neglect of duty.

Liability of
Commissioners
for breach of
trust.

109. (1) No suit shall be brought against the Commissioners, or against any Commissioner, or against any of the officers or servants of the Commissioners or any person acting under their direction, for anything purporting to be done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of the Commissioners or at the place of abode of such person, stating the cause of suit and the name and place of abode of the intending plaintiff ; and unless such notice is proved, the Court shall dismiss the suit.

Notice and
limitation of
suits.

(Chapter XII.—Miscellaneous.—Secs. 110-112.)

(2) Every such suit shall be commenced within six months next after the accrual of the right to sue and not afterwards.

(3) If any person to whom any such notice of suit is given tenders sufficient amends before the suit is brought, such plaintiff shall not recover.

Responsibility
of Commissioners
for loss, etc.

110. The responsibility of the Commissioners for the loss, destruction or deterioration of animals or goods, during such time as the same remain in the possession or under the control of the Commissioners, shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872.

IX of 1872.

Indemnity to
Commissioners
for acts of
officers, etc.

111. Except as provided in section 110, the Commissioners shall not be answerable—

- (i) for any misfeasance, mal-feasance or non-feasance of any officer appointed under this Act or of any conservator or harbour-master, or of any pilot, or of any deputy or assistant of any of the officers above-mentioned, or of any person acting under the authority or direction of any such officer, deputy or assistant; or
- (ii) for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things within the limits of the port which may be used by such vessel:

Provided that nothing in this section shall protect the Commissioners from a suit in respect of any negligence or default on their part or of any act done by or under their express order or sanction.

Saving of
previous Port
Regulations,
etc.

112. All acts done and proceedings taken by the Commissioners appointed under the Chittagong Port Commissioners Act, 1887,¹ and all orders, rules, regulations and by-laws relating to the port, and to wharves, quays, stages, jetties, piers, landing places, tolls, charges, rates and dues within the port made and issued before the commencement of this Act, shall, whenever such acts, proceedings, orders, rules, regulations or by-laws would have been lawful if this Act had been in force, be deemed to have been respectively done, taken, made and issued under the provisions of this Act.

Ben. Act
IV of
1887.

¹Ben. Act IV of 1887 has been repealed by this Act, see Sch. I.

of 1914.]

(Chapter XII.—Miscellaneous.—Section 113.—The First Schedule.)

113. All fees and sums due on account of property for the time being vested in the Commissioners, and all arrears of tolls, dues, rates and charges imposed under this Act, may be recovered as if they were arrears of land revenue, in addition to the other modes provided by this Act.

Recovery of dues as arrears of land revenue.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

1	2	3	4
Year.	No.	Short title.	Extent of repeal.

Act of the Governor General of India in Council.

1903	..	I	The Repealing and Amending Act, 1903.	So much of the Second Schedule as relates to Bengal Act IV of 1887.
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Acts of the Lieutenant-Governor of Bengal in Council.

1887	..	IV	The Chittagong Port Commissioners Act, 1887.	The whole.
1903	..	IV	The Chittagong Port Commissioners (Amendment) Act, 1903.	The whole.

Act of the Lieutenant-Governor of Eastern Bengal and Assam in Council.

1912	..	I	The Chittagong Port Commissioners (Amendment) Act, 1912.	The whole.
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¹Now known as the Amending Act, 1903, vide Act X of 1914, Sch. II.

[Ben. Act V

(The Second and Third Schedules.)

THE SECOND SCHEDULE.

(See section 50.)

FORM OF RECEIPT FOR GOODS.

By the Port Commissioners
Assam Bengal Railway Company, Chittagong,
Landed during the _____ day of _____ from the
by the Port Commissioners
Assam Bengal Railway Company, Chitta-
gong, the _____ noted in the margin; contents
and state of the contents unknown.

NOTE.—If there be any apparent injury, this is to be stated.
A. B.,

For the Port Commissioners Chittagong.
Assam Bengal Railway Company,

CHITTAGONG :

The day of _____.

THE THIRD SCHEDULE.

PROPERTY VESTED IN THE COMMISSIONERS.

(See sections 70 and 71.)

PART I.—IMMOVABLE PROPERTY TRANSFERRED BY GOVERNMENT TO THE COMMISSIONERS CONSTITUTED UNDER THE CHITTAGONG PORT COMMISSIONERS' ACT, 1887.²

ben. Act
IV of
1887.

1. All the Land belonging to Government, bounded on the east by the Nimtoly creek, on the south by the Karnaphuli river, on the west by the Monoharkhali creek, and on the north by a line drawn from Nimtoly creek to Monoharkhali creek, east and west immediately to the south of the premises owned by B. R. Texeira, known at the time of the passing of the Chittagong Port Commissioners Act, 1887² (hereinafter in this schedule called the said Act), as the Sailors' Home, covering Revisional Survey Plots Nos. 418, 416, 415, 382, 381, 383, 384, 400, 401, 403, 379, 385, 378, 387, 402, part of 394, part of 370, part of 417, part of 369 and part of 414.

¹This Schedule was substituted for the existing Schedule by section 10 of the Chittagong Port (Amendment) Act, 1936 (XX of 1936).

²Ben. Act IV of 1887 has been repealed by this Act, see Sch. I.

of 1914.]

(The Third Schedule)

2. The land held by Government at the time of the passing of the said Act, in the occupation of the Customs Department bounded on the east by the road known as the Rangamati road, on the south by the land belonging to Government, the boundaries of which are set forth in Article I of this schedule, on the west by the Monoharkhali creek and on the north by private property, *viz.*, Plot No. 7 of the cadastral survey, but excluding Plot No. 12 of the said survey, covering Revisional Survey Plots Nos. 171, 172, 170, 169, 249, 248, 197, 254, 244, 251, 252, 253, 255, 256, 257, 258, 371, 372, 405, 404, 397, 373, 406, 407, 392, 409, 408, 399, 398, 374, part of 417, part of 370, part of 394, part of 369 and part of 414.

3. The land held by Government, bounded on the east by the Monoharkhali creek, on the south by the land at the time of the passing of the said Act occupied by the Government Salt Golahs, on the west by a public road leading to the Sadar Ghat jetty, and on the north by private property, *viz.*, Plot No. 19 of the cadastral survey, covering Revisional Survey Plots Nos. 355, 396, 354, 395, 193, 192, 194, 195, 189, 266, 188, 187, 186, and part of 356.

4. The Sadar Ghat jetty and the approaches leading thereto measuring .094 acre covering Revisional Survey Plots Nos. 3399 and 3400 in mauza Madarbari, Ward D.

5. The waste land (known as Southfield) belonging to Government at the time of the passing of the said Act occupied by the Customs Department, bounded on the east by the Sadar Ghat road, on the south by the Strand road, on the west by a tank, at the time of the passing of the said Act, in the possession of Messrs. Bulloch Brothers, and on the north by a road running east and west, lying to the south of the Port Commissioner's office, measuring more or less 1.875 acres covering Revisional Survey Plot No. 3370 in mouza Madarbari, Ward D.

6. The land at the time of the passing of the said Act occupied by the Port godowns and yard (at present Workshop site), bounded on the east by the public road leading to the Sadar Ghat jetty, on the south by the Karnaphuli river, on the west by the premises at the time of the passing of the said Act in the occupation of Messrs. Bulloch Brothers, and on the north by the Strand road, measuring more or less 1.408 acres, covering Revisional Survey Plots Nos. 3398 and 3401 in mouza Madarbari, Ward D.

7. All other land the property of Government within the limits of the Port of Chittagong being within fifty yards of high-water mark on both banks of the Karnaphuli river, except the land at the time of the passing of the said Act occupied by the Government Salt Golahs, and all land, other

(The Third Schedule.)

than land with regard to which Government has the right of assessment only, within the limits of the port included in any survey plot through which a line drawn fifty yards above high-water mark passes.

(a) The foreshore land in mouza Sujakatgar (known as Chaktai in the east of Anti-Mohammad Ghat jetty) covering Revisional Survey Plots Nos. 1703, 1557, 1558, 1701, 1702, 1559, 1698, 1700, 1568, 1699, 1704, 1705, 1706, 1636, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1711, 1712, 1713, 1714, 1715, 1716, 1630, 1631, 1632, 1633, 1634, 1635, 1717, 1719, 1720, 1669, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1658, 1659, 1661, 1663, 1666, 1667, 1718, 1721, 1655, 1710, in mouza Sujakatgar and part of Revisional Survey Plot No. 1816 in mouza Patharghata.

(b) The foreshore land in mouza Sujakatgar (on the west of Anti-Mohammad Ghat jetty), covering Revisional Survey Plots Nos. 1801, 1803 and 1805.

(c) The foreshore land at Feringhibazar, covering Revisional Survey Plots Nos. 601, 500, 501, 280 and part of 246.

(d) The foreshore land at Monoharkhali covering Revisional Survey Plots Nos. 389, 365 and part of 549.

(e) The foreshore land at Ichanagar covering Revisional Survey Plots Nos. 463, 454/14085, 416/14083 and 417/14084.

(f) The foreshore land at Dangar Char, covering Revisional Survey Plots Nos. 2769, 2796, 2793, 2788, 2787, 2792, 2795, 2794, 2220, 1736, 2790, 2786, 2791, 1734, 2789, 2785, 2783, 2782, 2784, 1731, 2780, 2781, 2779, 2962, 1728, 2778, 1727, 1722, 1721, 1718, 1716, 1715, 1340, 1339, 1338, 1334, 1335, 1330, 1329, 1307, 1308, 1291, 1292, part of 1293, part of 1289, 1290, 1279, part of 1280, 1278, 1277, part of 1276, 1273, 1272, part of 1264, part of 1263, part of 1085, part of 1084, part of 1083, part of 1082, part of 1006, part of 1005, part of 1004, part of 1003, part of 1002, 677, 676, 675, part of 678, part of 679, part of 680, part of 674, part of 673, 672, 671, 666, part of 665, part of 667, 549, part of 545, part of 547, 548, 541, 542, 543, 535, 536, 537, 533, 519, 544, 520, 516, 517, 518, 524, 515, 506, 507, 504, 505, 501, 502, 670/2965, 487, 488, 489, 491, 486, 485, 484, 482, 470, 471, 472, 473, 474, 469, 468, 477, 95/2964, 96, 82, 475, 2, 91, 119, 120, 832, 109, 112, 831, 833, 113, 114, 6, 11, 12, 1, part of 67, part of 71, 72, 73 part of 31, part of 39, and part of 55.

(g) The Majher Char (Middle Island) measuring more or less 147·70 acres covering Revisional Survey Plot No. 1, Police Station, Anwara, Chittagong.

8. A plot of land measuring more or less 6·064 acres (being the site of the Port Engineer's residence), bounded on the north and east by railway land, on the south by a

of 1914.]

(The Third Schedule.)

public road and railway land, and on the west by land belonging to Government and containing the quarters of the District Superintendent of Police, covering Revisional Survey Plots Nos. 376, 377, 378, 384, 385, 426, 456, 471, 472, 473, 474, 475, 476, 477 and 478 in mouza Enathbazar and Revisional Survey Plots Nos. 112, 113, 383, and 385 in mouza Battali, Ward B.

9. A plot of land measuring 350 feet by 240 feet more or less 1·807 acres (being the site of Port Commissioners' office and Port and Shipping office), bounded on the north by Government land containing the Sadarghat police station, on the south by a road referred to in Article 5 of this schedule, on the east by Sadarghat road, and on the west by private land, covering Revisional Survey Plots Nos. 3362 and 3363 in mouza Madarbari, Ward D.

10. Strips of land measuring more or less 12·19 acres in mouza Bandar (being the site for Sanitorium bungalow at Juldia) covering Revisional Survey Plots Nos. 1171 and 1139.

11. A strip of land known as Sadarghat Salt Golah land, in exchange of present salt golah land at Moheshkhali, in mouza Monoharkhali covering Revisional Survey Plots Nos. 363, 364, 366, 367, 361, 359, 358, 357, 360, and part of 356.

12. A piece of land in mouza Uttar Paruapara (being the site of Norman's Point Lighthouse) measuring more or less 1·04 acres covering Revisional Survey Plots Nos. 235, 236, 237, 238 and 239.

13. A piece of land in mouza Dakshin Dhurung (being the site of the Kutubdia Lighthouse) covering Revisional Survey Plots Nos. part of 1017, part of 1018, part of 1022, 1019, 1020 and 1021.

PART II.—IMMOVEABLE PROPERTY ACQUIRED OTHERWISE THAN BY DIRECT TRANSFER FROM GOVERNMENT.

(a) Acquired for the revetment of the Karnaphuli river.

1. A strip of land (in Revetment Section I) in the village Maidya Halishahar (formerly Moheshkhali) measuring 800 feet by 130 feet, more or less 2·95 acres bounded on the north by the Strand road and villages, on the south by the Commissioners' land, on the east by land belonging to the Assam Bengal Railway, and on the west by paddy fields, covering Revisional Survey Plots Nos. 15763, 15770, 15771, 15772, 14145, 14079, 14080, 14144, 14062/15801 and part of 15673.

(The Third Schedule.)

2. A strip of land (in Revetment Section I), in the village Maidya Halishahar (formerly Kumerkhali) measuring 2,900 feet by 500 feet, more or less 14·56 acres situated on the right bank of the Karnaphuli river, bounded on the north by paddy fields, on the south by the Karnaphuli river, on the east by the railway land, and on the west by Kumarkhal, covering Revisional Survey Plots Nos. 15769, 15667, 15666, 15665, 15662, 15663, 15664, 15660, 15659, 15658, 15661, 15687, 15686, 15685, 15684, 15778 and part of 15673,

3. A strip of land (in Revetment Section II) in the village Dakshin Halishahar between khals Nos. 3 and 4 measuring 3,400 feet by 1,000 feet, more or less 82·36 acres situated on the right bank of the Karnaphuli river and bounded on the north by Kumarkhal, on the south by Miraparkhal, on the east by the Karnaphuli river, and on the west by paddy fields, covering Revisional Survey Plots Nos. 8106, 8108, 8105, 8107, 8104, 8103, 8102, 8440, 8439, 8101, 8099, 8100, 8109, 8110, 8111, 8112, 8113, 8114, 8117, 8118, 8119, 8346, 8344, 8313, 8342, 8340, 8392, 8341, 8436, 8345, 8391, 8352, 8351, 8349, 8348, 8347, 8353 and part of 8354.

4. A strip of land (in Revetment Section III) in the village Dakshin Halishahar between khals Nos. 4 and 5 measuring 2,200 feet by 800 feet, more or less 35·62 acres situated on the right bank of the river Karnaphuli, bounded on the north by Miraparkhal, on the south by Domakhal, on the east by the Karnaphuli river, and on the west by paddy fields covering Revisional Survey Plots Nos. 8435, 8431, 8437, 8339, 8338, 8328 97013, 2432/97014, 2433/97016, 2436 97015, 9693, 9555, 9554, 9691, 9553, 9686, part of 8354 and part of 9556.

5. A strip of land (in Revetment Section III) in the Dakshin Halishahar between khals Nos. 5 and 6 measuring 2,300 feet by 800 feet, more or less 35·82 acres situated on the right bank of the river Karnaphuli, bounded on the north by the Domakhal, on the south by Wootarkata khal, on the east by the Karnaphuli river, and on the west by paddy fields covering Revisional Survey Plots Nos. 9552, 9687, 9551, 9694, 9695, 9557, 9696, 9697, 9698, 9550, 9558 and part of 9556.

6. A strip of land (in Revetment Section IV) in the village Dakshin Halishahar between khals Nos. 6 and 7 measuring 1,400 feet by 800 feet, more or less 25·99 acres situated on the right bank of the river Karnaphuli, bounded on the north by Wootarkata khal, on the south by Dakshin-kata khal, on the east by the Karnaphuli river, and on the west by paddy fields covering Revisional Survey Plots Nos. 9549, 9559, 9548, 9699, 9700, 9701, 9702, 9560, 9703, 9547, 9704, 9546, 9688, 9545, 9544/97012, 9449, and part of 9556.

of 1914.]

(The Third Schedule.)

7. A strip of land (in Revetment Section IV) in the village Uttar Patenga (formerly Patiya) between khals Nos. 7 and 8 measuring 3,800 feet by 900 feet more or less 73·43 acres situated on the right bank of the river Karnaphuli, bounded on the north by the Karnaphuli river, on the south by paddy fields, on the east by Kawini khal, and on the west by Dakshinkata khal covering Revisional Survey Plots Nos. 4638, 4806, 4635, 4634, 4029, 4030, 4636, 4637, 4639, 4633, 4619, 4632, 4631, 4675, 4630, 4629, 4628, 4627, 4626, 4625, 4624, 4623, 4622, 4621, 4620, 4906, 4640, 4641 and 4642.

8. Strips of land (in Revetment Section V) in the village Utter Patenga between khals Nos. 8 and 9 measuring more or less 23·70 acres covering Revisional Survey Plots Nos. 4643, 4928, 4924, 4719, 4867, 4868 and 4720.

9. Strips of land (in Revetment Section V) in mouza Purba Patenga between khals Nos. 9 and 11 measuring more or less 96·65 acres covering Revisional Survey Plots Nos. 90, 91, 527, 97, 98, 99, 101, 268, 269, 270, 495, 497, 524, 525 and 530.

10. Strips of land (in Revetment Section VI) in mouzas Purba and Dakshin Patenga between khal 11 and Patenga Point measuring more or less 171·30 acres, covering Revisional Survey Plots Nos. part of 8859, part of 8858, part of 8860, part of 8861, part of 8833, part of 8862, part of 8865, 8863, 8864, part of 9620, part of 9619, part of 9618, 9621, 9622, 9623, 9624, 9774, 9625, 9627, 9775, 9626, 9628, part of 9612, part of 9631, 9630, 9629, 9776, 9636, 9635, 9777, 9634, part of 9633, part of 9638, 9778, 9637, 9779, part of 9617, part of 9616, 9648, 9789, 9781, 9649, part of 9650, part of 9651, part of 9655, part of 9793, 9656, 9782, 9783, 9672, part of 9670, part of 9669, part of 9668, 9671, 9675, 9674, 9673, 9776, 9678, part of 9795, part of 9684, 9683, 9682, 9681, 9680, 9679, 9686, part of 9685, part of 9693, part of 9695, part of 9696, 9771, 9692, 9691, 9690, 9689, 9687, 9688, 9701, 9704, 9700, 9699, 9698, 9697, 9705, 9706, 9707, 9772, part of 9712, 9711, 9710, 9715, 9714, 9713, part of 9722, 9719, 9718, 9720, 9723, 9724, 9726, 9725, 9766, 9764, 9763, 9727, 9728, 9760, part of 9768, 9759, 9729, 9758, 9757, 9730, 9731, 9732, 9733, part of 9514, part of 9513, part of 9511, part of 9512, part of 9509, 9510, part of 9502, part of 9734, part of 9736, 9756, 9754, 9753, 9752, 9751, 9749, 9750, 9735, 9737, 9738, 9739, 9740, 9746, 9748, 9747, 9745, 9744, 9741, 9742, part of 9743, part of 3443, part of 3441, part of 3445, part of 3449, 3450, 3470, 3471, 3468, 3469, 3472, 3451, 3453, 3454, 3455, 3466, 3467, part of 3452, 3456, part of 3458, part of 3465, part of 3462, part of 3463, part of 3552, part of 1199, part of 1200, part of 1201, part of 1203, 1202, part of 1205, 1204, part of 1207, 1206, part of 1186, part of 1180, part of 1209, part of

[Ben. Act V*(The Third Schedule.)*

1197, part of 1198, part of 1208, part of 1250, part of 1249, part of 1248, part of 1247, part of 1244, part of 1256, part of 1240, part of 1251, 1252, 1258, 1257, 1259, 1260, 1261, part of 1253, part of 1152, part of 1263, part of 1264, 1261, 1262, part of 1238, 1239, 1236, 1235, 1234, 1230, part of 1243, 1231, part of 1233, part of 1232, part of 1266, 1225, part of 1151, part of 1224, part of 1241, part of 1223, part of 1227, part of 1228, 1229, 1226, part of 1213, part of 1242, and part of 1156, in mouza Dakshin Patenga and the Revisional Survey Plots Nos. 503, 498, 499, 500, part of 501, 504, part of 1264, part of 1265, part of 1269, part of 1270, 1350, part of 1271, part of 1272, part of 1279, part of 1280, part of 1297, part of 1347, 1281, 1298, 1299, part of 1905, part of 1906, part of 1723, 1908, 1907, part of 1724, part of 1725, part of 1732, part of 1733, part of 1734, part of 1735, part of 1804, 1805, 1806, part of 1799, part of 1808, 1807, part of 1809, 1810, part of 1812, 1811, part of 1816, 1817, part of 1819, 1818, part of 1920, 1821, part of 1824, 1823, 1822, part of 1825, part of 1829, 1839, part of 1838, part of 1842, 1841, part of 1844, 1845, part of 1849, 1848, part of 1859, part of 1858, 1860, part of 1857, 1866, 1867, 1868, 1865, 1864, part of 1856, part of 1855, part of 1869, 1871, 1870, part of 1875, 1874, 1873, 1877, 1878, part of 1876, part of 1883, part of 1884, 1882, 1881, 1880, 1879, part of 1887, 1888, part of 1891, 1890, part of 1892, 1900, part of 1893, 1899, part of 1894, 1898, part of 1895, 1896, part of 1902, part of 1761, and part of 1651 in mouza Purba Patenga.

11. Strips of additional land (in Revetment Section VI) in mouza Dakshin Patenga from midway between khals 15 and 16 to the Patenga Point measuring more or less 16·30 acres, covering Revisional Survey Plots Nos. part of 9631, part of 9632, part of 9633, part of 9610, part of 9638, part of 9647, part of 9646, part of 9645, part of 9650, part of 9651, part of 9655, part of 9793, part of 9670, part of 9669, part of 9667, part of 9668, part of 9795, part of 9684, part of 9796, part of 9693, part of 9696, part of 9694, part of 9685, part of 9695, part of 9712, part of 9722, part of 9521, part of 9517, part of 9514, part of 9515, part of 9513, part of 9511, part of 9512, part of 9508, part of 9507, part of 9506, part of 9609, part of 9502, part of 9734, part of 9736, part of 9501, part of 3441, part of 3442, part of 3443, part of 3444, part of 3445, part of 3449, part of 3452, part of 3456, part of 3457, part of 3458, part of 3564, part of 3465, part of 3463, part of 3461, part of 3552, part of 3462, part of 1199, part of 1198, part of 1197, part of 1196, part of 1195, part of 1186, part of 1180, part of 1209, part of 1208, part of 1250, part of 1249, part of 1248, part of 1247, part of 1244, part of 1246, part of 1240, part of 1243, part of 1242, part of 1213, part of 1241, part of 1222, part of 1214, part of 1228, part of 1227, part of 1223, part of 1154, part of 1153, part of 1150, part of 1152, part of 1224, part of 1151, part of 1266, and part of 1156.

of 1914.]

(The Third Schedule.)

12. A strip of additional land (in Revotment Section VI) in mouza Dakshin Patenga (at Patenga Point) measuring more or less 3.99 acres, covering Revisional Survey Plots Nos. part of 1223, part of 1153, part of 1154, part of 1150, part of 1149, part of 1151, part of 1146, part of 1145, part of 1266, part of 1267, and part of 1068.

13. Strips of land (By-channel land) measuring more or less 28.65 acres in the village of Chur Lakhya, police-station Patiya, zilla Chittagong, bounded on the north by parts of Cadastral Survey Plots Nos. 5471, 5478, 5476, 5619, 5705, 3326, 3320, 3318, 3314 of mouza Chur Lakhya and parts of Cadastral Survey Plots Nos. 361, 363, 370, 277 of Chak Moheshkhali, on the south by parts of Cadastral Survey Plots Nos. 5502, 5494, 5492, 5489, 5484, 5621, 3306, 3325, 3366, 3365, 3338, 3339, 3340, 3343, of Chur Lakhya and parts of Cadastral Survey Plots Nos. 371, 370, 372, 373, of Chak Moheshkhali, on the east by parts of Cadastral Survey Plots Nos. 3305, 3306, 3339, 3340, 5705, 5620, 5477, 5480, 5481, 5482, 5484, 5485, of mouza Chur Lakhya and parts of Cadastral Survey Plots Nos. 371, 372, 370, 373, of Chak Moheshkhali, on the west by parts of Cadastral Survey Plots Nos. 5496, 5494, 5502, 5620, 5617, 5705, of mouza Chur Lakhya and parts of Cadastral Survey Plots Nos. 370, 372, 373, of Chak Moheshkhali, covering Revisional Survey Plots Nos. 190, 191, 194, 195, 201, 202, 203, 204, 205, 206, 207, 208, 229, 230, 231, 232, 233, 234, 235, and 239 in mouza Dangar Char and Revisional Survey Plots Nos. 7934, 5603, 5515, 5602, 5605, 5606, 7904, 5559, 6856, 6857, 6858, 6854, 6849, 6848, 6846, 6869, 6868, 6870, 6871, 6904, 6832 and 6828 in mouza Chur Lakhya.

(b) Acquired for the Kutubdia Lighthouse.

14. Pieces of land in village Dakshin Dhurung (known as Kutubdia) measured at the Cadastral Survey in plots Nos. 5370, 5371, 5372, 5374, 5375, 5376, and 5377, covering Revisional Survey Plots Nos. part of 1017, part of 1018 and part of 1022.

(c) Acquired for boat registration.

15. A piece of land at Shahamirpur (formerly Shamshernagar) for Boat Registration Office and staff quarters (known as Kurumkhal Boat Registration Office) situated on the left bank of the Kurumkhal measuring 100 feet by 60 feet, more or less 10 acre, bounded on the north by the Kurumkhal, on the south and east by paddy fields, on the west by Karnaphuli river covering Revisional Survey Plot No. 12345.

[Ben. Act V]

(The Third Schedule.)

16. A piece of land for Boat Registration Office and staff quarters at Chaktai measuring 100 feet by 80 feet, more or less .18 acre situated on the right bank of the Chaktai khal bounded on the north, west and south by private land and on the east by Chaktai khal, covering Revisional Survey Plots Nos. 1677 and 1678 in mouza Sujakatgar and Revisional Survey Plot No. 1774 in mouza Patharghata.

(d) Acquired for Patenga Beacon.

17. A piece of land measuring more or less 0.15 acre in mouza Dakshin Patenga covering Revisional Survey Plot No. 3555.

(e) Acquired for the site of front Inner Bar Leading Light.

18. A piece of land in mouza Badalpura measuring more or less 0.005 acre covering part of Revisional Survey Plot No. 165.

(f) Acquired for approach road to Sanitorium Bungalow at Juddia.

19. A piece of land measuring more or less 0.468 acre covering Revisional Survey Plots Nos. part of 158A, part of 1139, 846A, part of 1140, part of 38A, part of 111A, part of 1141, 38, part of 35A, 35, 41A, 49A, 52A, part of 50, part of 608A, in mouza Bandar and Revisional Survey Plots Nos. part of 87, part of 88, part of 89, part of 91 and part of 246 in mouza Rangadia, police station Anwara, Chittagong.

(g) Acquired for new site of Port Commissioners' Workshop and store at Gosaildanga.

20. A piece of land (known as Turner Morrisons' land) in mouza Gosaildanga measuring more or less 3.05 acres, covering Revisional Survey Plots Nos. 4957, 4956, 4955, 4947, 4973, 5011, 4958, 4972, 4960, 4970, 4971, 4961, 4962, 4963, 4949, 4950, 4953, 4951, 4959, 4952, 4954, 4948, 4964, 4965, 4945, 4946, 4944, 4941, 4942, 4940, 4997, part of 4939, part of 4969, part of 4968, and part of 4943.

21. A piece of additional land (known as Turner Morrisons' land) in mouza Gosaildanga measuring more or less 1.60 acres covering Revisional Survey Plots Nos. 5012, 4966, 4987, 4988, 4989, 4990, 4991, 4992, 4993, 4994, 4996, 4995, 4998, part of 5013, part of 4974, part of 4969, part of 4968, part of 4967 part of 4986, part of 4999, part of 5000 and part of 9443.

of 1914.]

(The Third Schedule.)

(h) Acquired for coal yard and siding at Madarbari.

22. A piece of land (known as Arracan yard land) in mouza Madarbari measuring more or less 1·95 acres covering Revisional Survey Plots Nos. 1272, 1271, 1277, 1278, 1273, 1274, 1270, 1279 and 1280.

(i) Acquired for site of slip way at Monoharkhali.

23. Strips of land in mouza Monoharkhali measuring more or less 3·84 acres covering Revisional Survey Plots Nos. 202, 200, 265, 201, 204, 205, 206, 410, 375, 413, 376, 377, 196 and 250.

(j) Acquired for the improvement of Port Staff quarters at Monoharkhali and Feringhibazar.

24. Strips of land measuring more or less 11·37 acres covering Revisional Survey Plots Nos. 556, 543, 555, 544, 545, and part of 549 in mouza Monoharkhali, Revisional Survey Plot No. 728 in mouza Guribazar and Revisional Survey Plots Nos. 242, 243, 244, 245, and part of 246 in mouza Feringhibazar.

(k) Acquired for the site of Nautical Surveyor and Secretary's residence at Patton.

25. Strips of land in mouza Lalkhan Bazar, Ward B, measuring more or less 6·96 acres covering Revisional Survey Plots Nos. 1845, 1858, 1859, 1860, 1861, 1872, 1862, part of 1863, 1964, 1963 and part of 1965.

PART III.—IMMOVABLE PROPERTY HELD ON RENT.

1. A plot of land for Bench Mark Pillar in mouza Bandar measuring more or less ·19 acre covering Revisional Survey Plot No. 1145.

Bengal Act VI of 1914.

(The Bengal Medical Act, 1914.)

CONTENTS.

PREAMBLE.

Preliminary.

SECTION.

1. Short title, local extent and commencement.
2. Definitions.

The Bengal Council of Medical Registration.

3. Establishment of the Bengal Council of Medical Registration.
4. Constitution of Council.
5. Nomination of members in default of election.
6. Disqualifications for being elected or nominated a member.
7. Publication of names of members.
8. Leave of absence to members.
9. Cessation of membership.
10. Filling of casual vacancies.
11. Term of office of members.
12. Meetings.
13. Payment of fees and travelling expenses to members.
14. Registrar and establishment for the Council.

The Register of Registered Practitioners.

15. Orders by Council for maintenance of register of registered practitioners.
16. Maintenance of register by Registrar.
17. Persons referred to in schedule entitled to be registered.
18. Amendment of schedule.
19. Power to Council to call for certain information from authorities of Medical College or School included or wishing to be included in schedule.
20. Information to be furnished to Registrar with application for registration.
21. Entry of new titles and qualifications in register.
22. Disposal of fees.
23. Appeal to Council from decision of Registrar.
24. Erasure of fraudulent and incorrect entries.
25. Power to Council to direct removal of names from register, and re-entry of names therein.
26. Appeal to Provincial Government from decision of Council.
27. Bar to suits and other legal proceedings.

SECTION.

28. Notice of deaths, and erasure of names from register.
29. Penalty on unregistered person representing that he is registered.
30. Construction of references in Acts to medical practitioners.
31. Unregistered persons not to hold certain appointments.

Annual Medical List.

32. Publication and use of annual Medical List.

Rules and Regulations.

33. Rules and regulations.

THE SCHEDULE.—Persons who are entitled to have their names entered in the Register of Registered Practitioners.

Bengal Act VI of 1914.

(The Bengal Medical Act, 1914).¹

(27th May 1914.)

An Act to provide for the registration of Medical Practitioners in Bengal.

Whereas it is expedient to provide for the registration of medical practitioners in Bengal ;

55 and 56
Vict.,
c. 14.

And whereas the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

It is hereby enacted as follows :—

Preliminary.

1. (1) This Act may be called the Bengal Medical Act, 1914 ;

(2) It extends to the whole of Bengal ; and

(3) It shall come into force on the day on which it is published in the ²[*Official Gazette*] after having received the assent of the Governor General :

Short title,
local extent
and
commencement.

Provided that section 29, section 30 and section 31 shall not come into force until a date to be appointed in this behalf by the ³[Provincial Government] by notification in the ²[*Official Gazette*].

2. In this Act,—

Definitions.

(a) the expression “ the Medical Acts ” means the Medical Act, 1858, and the Acts amending the same ;

(b) the expression “ the Council ” means the Council established under section 3 ; and

(c) the expression “ registered practitioner ” means any person registered under the provisions of this Act.

21 and 22
Vict.,
c. 90.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1913, Pt. IV, p. 246 ; for Report of Select Committee, see *ibid*, 1914, Pt. IV, pp. 50 to 53 ; for Proceedings in Council, see *ibid*, 1913, Pt. IVA, pp. 796, 797, and *ibid*, 1914, Pt. IVA, pp. 18 to 31, 210, 544 to 592, 595 to 613.

LOCAL EXTENT.—This Act extends to the whole of Bengal, see s. 1 (2).

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4(2).

²These words were substituted for the words “ *Calcutta Gazette* ” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words “ Local Government ”, *ibid*.

(Secs. 3, 4.)

The Bengal Council of Medical Registration.

Establishment
of the
Bengal
Council of
Medical
Registration.
Constitution of
Council.

3. A Council shall be established and called " the Bengal Council of Medical Registration " ; and such Council shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

14. The said Council shall consist of the following members, namely :—

- (a) a president to be nominated by the ²[Provincial Government] ;
- (b) three members to be nominated by the ²[Provincial Government] of which one is to be from the staff of the School of Tropical Medicine ;
- (c) one member to be elected from among the members of the Faculty of Medicine by the Senate of the Calcutta University ;
- (d) one member to be elected by and from among the staff of each medical school or college affiliated to the Calcutta University or the Dacca University or to any other University hereafter established within Bengal ;
- (e) one member to be elected by and from among the staff of each institution in Bengal other than those mentioned in clause (d) which is or may hereafter be recognised by the Bengal Council of Medical Registration for admission of its students to the final Licentiate or Membership standard of examination of the State Medical Faculty of Bengal ;
- (f) four members to be elected by registered practitioners who are graduates or licentiates in Medicine or Surgery of the University of Calcutta of which one must be a teacher in a medical institution recognised by the Bengal Council of Medical Registration ;
- (g) two members to be elected by registered practitioners who are qualified to be registered under the Medical Acts of which one must be a teacher in a medical institution recognised by the Bengal Council of Medical Registration ;
- (h) three members to be elected by registered practitioners other than those referred to in clauses (f) and (g) of which one must be a teacher in a medical institution recognised by the Bengal Council of Medical Registration :

¹Section 4 was substituted for the original section by s. 2 of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

²See foot-note 3 on p. 535, *ante*.

of 1914.]

(Secs. 5-9.)

Provided that, of the members to be elected under clause (f) or clause (h), one member shall in each case be elected by and from among registered practitioners practising outside Calcutta.

5. If any of the electoral bodies referred to in clauses (c) to ¹[(h)] of section 4 does not, by such date as may be prescribed by rule made in that behalf under section 33, elect a person to be a member of the Council, the ²[Provincial Government] shall nominate a member in his place; and any person so nominated shall be deemed to be a member as if he had been duly elected by such body.

Nomination of members in default of election.

6. A person shall be disqualified for being elected or nominated a member of the Council if he—

Disqualifications for being elected or nominated a member.

- (a) is not registered under this Act; or
- (b) has been sentenced by any Court for any non-bailable offence, such sentence not having been subsequently reversed or quashed, and such person's disqualification on account of such sentence not having been removed by an order which the ²[Provincial Government] are hereby empowered to make, if they think fit, in this behalf; or
- (c) is an undischarged insolvent;

3* * * * *

7. The name of every member elected or nominated under section 4 or section 5 shall be published by the ²[Provincial Government] in the ⁴[*Official Gazette*].

Publication of names of members.

8. The Council may permit any member to absent himself from meetings of the Council for any period not exceeding six months.

Leave of absence to members.

9. (1) A member of the Council shall be deemed to have vacated his seat—

Cessation of membership.

- (a) on his absence without excuse sufficient in the opinion of the Council from three consecutive meetings of the Council, or
- (b) on his absence out of India for any period exceeding six consecutive months, or
- (c) on his becoming disqualified for election or nomination as a member for any of the reasons mentioned in section 6.

¹The brackets and letter “(h)” were substituted for the brackets and letter “(f)” by s. 3 of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

²See foot-note 3 on p. 535, *ante*.

³The proviso was repealed by s. 4 of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

⁴See foot-note 2 on p. 535, *ante*.

(Secs. 10-12.)

(2) On the occurrence of any vacancy referred to in sub-section (1), the President shall forthwith report the fact of such vacancy to the ¹[Provincial Government].

Filling
of casual
vacancies.

²10. When the place of a nominated or elected member of the Council becomes vacant by his resignation or death or by his ceasing to be a member as provided in sub-section (1) of section 9, a new member shall be nominated or elected within one month in the manner provided by section 4, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Provided that no act of the Council or of its members shall be deemed to be invalid by reason only that the number of members of the Council at the time of the performance of such act was less than the number provided by section 4.

Term of office
of members.

11. (1) The term of office of the first members elected or nominated under section 4 or section 5 shall commence on such day as may be appointed by the ¹[Provincial Government].

(2) Subject to the provisions of section 9, sub-section (1), ²[and section 10,] the term of office of members shall be three years.

(3) Any member shall, if not disqualified for any of the reasons mentioned in section 6, be eligible for re-election or re-nomination at the end of his term of office.

Meetings.

12. (1) The Council shall make regulations to regulate—

- (a) the times and places at which their meetings shall be held,
- (b) the issue of notices convening such meetings,^{4*}
- (c) the conduct of business thereat, ⁵[, and
- (d) the appointment, powers and duties and procedure of special committees including special committees appointed under sub-section (2) of section 19 :]

Provided that—

- (i) no business shall be transacted at any meeting ⁶[of the Council] unless a quorum of eight members be present ; and,
- (ii) save as provided in section 17 and section 25, all questions arising at any meeting ⁶[of the Council] shall be decided by the votes of the majority of the members present and voting, or, in case of an equality of votes, by the casting vote of

¹See foot-note 3 on p. 535, *ante*.

²Section 10 was substituted for the original section by s. 5 of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

³These words and figure were inserted by s. 6, *ibid*.

⁴The word "and" was omitted by s. 7 (i), *ibid*.

⁵These words in square brackets were inserted by s. 7 (ii), *ibid*.

⁶These words were inserted by s. 7(iii), *ibid*.

of 1914.]

(Secs. 13-15.)

the President, or, in his absence, of the member presiding at the meeting.

(2) Until such time as the regulations referred to in sub-section (1) have come into operation, it shall be lawful for the President to summon a meeting at such time and place as to him shall seem expedient, by letter addressed to each member.

13. There shall be paid to the members of the Council such fees for attendance at meetings of the Council ¹[or of special committees], and such reasonable travelling expenses ²[for such attendance and for journeys undertaken in the discharge of their duties under this Act], as may from time to time be allowed by the Council and approved by the ³[Provincial Government].

Payment of fees and travelling expenses to members.

14. (1) With the previous sanction of the ³[Provincial Government], the Council-

Registrar and establishment for the Council.

- (a) shall appoint a Registrar,
- (b) may grant leave to such Registrar and appoint a person to act in his place, and
- (c) shall pay to the Registrar and to the person (if any) appointed to act in his place such salary and such allowances (if any) as the Council may determine.

(2) The Council may appoint such other officers and such clerks and servants as they may consider necessary for the purposes of this Act, and shall pay them such salary and such allowances (if any) as the Council may determine.

(3) The Registrar shall act as Secretary to the Council.

(4) Every person appointed under sub-section (1) and sub-section (2) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

The Register of Registered Practitioners.

15. (1) The Council shall, as soon as conveniently may be after the commencement of this Act and from time to time as occasion may require, make orders for regulating the maintenance of a register of registered practitioners.

Orders by Council for maintenance of register of registered practitioners.

(2) The said register shall be kept in such form as may be prescribed by rule made under section 33.

¹These words were inserted by s. 8(i) of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

²These words were inserted by s. 8(ii), *ibid*.

³See foot-note 3 on p. 535, *ante*.

(Secs. 16-18.)

Maintenance
of register
by Registrar.

16. (1) The Registrar shall keep the register of registered practitioners in accordance with the provisions of this Act and of any orders made by the Council, and shall from time to time make all necessary alterations in the registered addresses or appointments, and the registered qualifications or titles, of such practitioners and erase the names of any practitioners who have died.

(2) To enable the Registrar to fulfil the duties imposed upon him by sub-section (1), he may send through the post a letter to any registered practitioner, addressed to him according to his registered address or appointment, to inquire whether he has ceased to practise or whether his residence or appointment has been changed; and if no answer to any such letter is received within a period of six months from its despatch, the Registrar may erase the name of such registered practitioner from the register:

Provided that any name erased under this sub-section may be re-entered in the register under the direction of the Council.

Persons
referred to in
schedule
entitled to be
registered.

17. Every person referred to in the schedule shall, subject to the provisions hereinafter contained, and on payment of such fee as may be prescribed in this behalf by regulation made under section 33, be entitled to have his name entered in the register of registered practitioners:

Provided that the Council may refuse to permit the registration of the name of any person—

(a) who has been sentenced by any Court for any non-bailable offence, such sentence not having been subsequently reversed or quashed, and such person's disqualification on account of such sentence not having been removed by an order which the ¹[Provincial Government] are hereby empowered to make, if they think fit, in this behalf; or

(b) whom the Council, after due inquiry (at which an opportunity has been given to him to be heard in his defence and to appear either in person or by counsel, vakil, pleader or attorney, and which may, in the discretion of the President, be held *in camera*), have found guilty, by a majority of two-thirds of the members present and voting at the meeting, of infamous conduct in any professional respect.

Amendment
of schedule.

18. If the Council are satisfied—

(a) that any title granted or qualification certified by any University, Medical Corporation, examining body or other Institution is a sufficient guarantee that

¹See foot-note 3 on p. 535, *ante*.

of 1914.]

(Sec. 19.)

persons possessing such title or qualification possess the knowledge and skill requisite for the efficient practice of medicine, surgery and midwifery, or

- (b) that any title or qualification referred to in Article 3 of the schedule is not a sufficient guarantee as aforesaid,

they may make a report to that effect to the ¹[Provincial Government], who may, if they think fit, thereupon direct, by notification in the ²[Official Gazette].—

- (i) in case (a)—that the possession of such title or qualification shall, subject to the provisions hereinafter contained and on payment of such fee as may be prescribed in this behalf by regulation made under section 33, entitle any person to have his name entered in the register of registered practitioners, or
- (ii) in case (b)—that the possession of such title or qualification shall not entitle any person to have his name entered in the said register ;

and the schedule shall thereupon be deemed to be altered accordingly.

19. ³[(1)] The Council shall have power to call on the governing body or authorities of any Medical College or School included in or desirous of being included in the schedule—

Power to Council to call for certain information from authorities of Medical College or School included or wishing to be included in schedule.

- * (a) to furnish such reports, returns or other information as the Council may require to enable them to judge of the efficiency of the instruction given therein in medicine, surgery and midwifery ; and
- (b) to provide facilities to enable any member of the Council (deputed by the Council in this behalf) to be present at the examinations to be held by such College or School.

³(2) The Council shall have power to inspect any such Medical College or School and may for this purpose appoint a Special Committee of not less than three or more than five members of the Council to inspect any such institution and submit a report in regard thereto to the Council.

¹See foot-note 3 on p. 535, ante.

²See foot-note 2 on p. 535, ante.

³Section 19 was re-numbered as sub-section (1) of section 19 and sub-section (2) was added by s. 9 of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

(Secs. 20-24.)

Information to be furnished to Registrar with application for registration.

20. Every person who applies to have his name entered in the register of registered practitioners—

(a) must satisfy the Registrar that he is possessed of some title or qualification referred to in the schedule as altered by notifications (if any) issued under section 18 ; and

(b) if he is registered under the Medical Acts,—

(i) must correctly inform the Registrar of the date of such registration, and

(ii) must furnish the Registrar with a correct statement of the titles or qualifications in respect of which he is so registered, and of the dates on which he obtained them, or

(c) if he is not registered under the Medical Acts—must correctly inform the Registrar of the dates on which he obtained the titles or qualifications which entitle him to claim registration under this Act

Entry of new titles and qualifications in register.

21. If any person whose name is entered in the register of registered practitioners obtains any title or qualification other than the title or qualification in respect of which he has been registered, he shall, on payment of such fee as may be prescribed in this behalf by regulation made under section 33, be entitled to have an entry stating such other title or qualification made against his name in the register either in substitution for, or in addition to, any entry previously made.

Disposal of fees.

22. All fees received by the Council under this Act shall be applied for the purposes of this Act, in accordance with such rules as may be made by the [Provincial Government] under section 33.

Appeal to Council from decision of Registrar.

23. If any person is dissatisfied with any decision of the Registrar, refusing to enter the name or any title or qualification of such person in the register of registered practitioners, he may, at any time within three months from the date of such decision, appeal to the Council, whose decision shall be final.

Erasure of fraudulent and incorrect entries.

24. Any entry in the register of registered practitioners, which is proved to the satisfaction of the Council to have been fraudulently or incorrectly made, may be erased under an order in writing of the Council.

¹See foot-note 3 on p. 535, *ante*.

of 1914.]

(Secs. 25-28.)

25. The Council may direct—

(a) that the name of any registered practitioner—

- (i) who has been sentenced by any Court for any non-bailable offence, such sentence not having been subsequently reversed or quashed, and such person's disqualification on account of such sentence not having been removed by an order which the ¹[Provincial Government] are hereby empowered to make, if they think fit, in this behalf; or
- (ii) whom the Council, after due enquiry as provided in clause (b) of section 17 have found guilty, by a majority of two-thirds of the members present and voting at the meeting, of infamous conduct in any professional respect,

be removed from the register of registered practitioners, and

(b) that any name so removed be afterwards re-entered in the register.

Power to Council to direct removal of names from register, and re-entry of names therein.

26. (1) An appeal shall lie to the ¹[Provincial Government] from every decision of the Council under section 17 or section 25.

(2) Every appeal under sub-section (1) shall be preferred within three months from the date of such decision.

Appeal to Provincial Government from decision of Council.

27. No suit or other legal proceeding shall lie in respect of any act done in the exercise of any power conferred by this Act on the ¹[Provincial Government] or the Council ²[or any Committee of the Council] or the Registrar.

Bar to suits and other legal proceedings.

28. (1) Every Registrar of Deaths who receives notice of the death of any person whose name he knows to be entered in the register of registered practitioners shall forthwith transmit by post to the Registrar of the Council a certificate of such death, signed by him and stating particulars of the time and place of death.

Notice of deaths, and erasure of names from register.

(2) On receipt of—

- (a) any such certificate, or
- (b) any other reliable information regarding such death,

the Registrar of the Council shall erase the name of the deceased person from the register.

¹See foot-note 3 on p. 535, *ante*.

²These words were inserted by s. 10 of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

(Secs. 29-32.)

Penalty on unregistered person representing that he is registered.

29. If any person whose name is not entered in the register of registered practitioners falsely pretends that it is so entered, or uses in connection with his name or title any words or letters representing that his name is so entered, he shall, whether any person is actually deceived by such representation or not, be punishable, on conviction by a Presidency Magistrate or a Magistrate of the first class, with fine which may extend to three hundred rupees.

Construction of references in Acts to medical practitioners.

30. The expression "legally qualified medical practitioner," or "duly qualified medical practitioner," and all other expressions importing a person recognised by law as a medical practitioner or a member of the medical profession, as used in any Bengal Act or any Act of the ¹[Central Legislature] in force in Bengal, shall be deemed to mean a medical practitioner registered under the Medical Acts or this Act; and no certificate required to be given by any medical practitioner or medical officer under any Bengal Act or any Act of the ¹[Central Legislature] in force in Bengal shall be valid unless such practitioner or officer is registered under the Medical Acts or this Act.

Unregistered persons not to hold certain appointments.

31. Except with the special sanction of the ²Provincial Government] no person other than a registered practitioner shall be competent to hold any appointment as medical officer of health, or as physician, surgeon or other medical officer in any hospital, asylum, infirmary, dispensary or lying-in-hospital which is supported partially or entirely by public or local funds.

Annual Medical List.

Publication and use of annual Medical List.

32. (1) The Registrar shall, in every year, on or before a date to be fixed in this behalf by the Council, cause to be printed and published a correct list of the names for the time being entered in the register of registered practitioners, and setting forth---

- (a) all names entered in the register, arranged in alphabetical order according to the surnames,
- (b) the registered address or appointment of each person whose name is entered in the register, and
- (c) the registered titles and qualifications of each such person, and the date on which each such title was granted or each such qualifications was certified.

(2) Every Court shall presume that any person whose name is entered in the latest of such lists is duly registered under this Act, and that any person whose name is not so entered is not registered under this Act :

¹These words were substituted for the words " Governor-General of India in Council " by Sch. IV of the Government of India (Adaptation of Indian Laws), Order, 1937.

²See foot-note 3 on p. 535, *ante*.

of 1914.]

(Secs. 33, 34.)

Provided that, in the case of any person whose name does not appear in such list, a certified copy, signed by the Registrar, of the entry of the name of such person in the register of registered practitioners shall be evidence that such person is registered under this Act.

Rules and Regulations.

33. (1) The ¹[Provincial Government] may from time to time make rules to carry out the purposes of this Act. Rules and regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[Provincial Government] may make rules—

- (a) to regulate elections under clauses (c) to ²[(h)] of section 4 and to prescribe, for the purposes of the proviso to section 4, the area to be included within Calcutta ;
- (b) to prescribe the form of the register of registered practitioners to be maintained under this Act ;
- (c) to regulate the application of fees under section 22 ; and
- (d) to regulate the procedure to be followed by the Council in—
 - (i) conducting any inquiry referred to in proviso (b) to section 17, or clause (a) of section 25 ; and
 - (ii) disposing of appeals from the decision of the Registrar preferred under section 23.

(3) In addition to the power conferred by section 12 the Council may, with the previous sanction of the ¹[Provincial Government] make regulations—

- (a) to prescribe the fees chargeable in respect of any registration under this Act ; and
- (b) to regulate the keeping of accounts of such fees.

(4) All such rules and regulations shall be published in the ³[Official Gazette].

26 Geo.
V. c. 2.

34. This Act has effect subject to the provisions of Chapter III of Part V of the Government of India Act, 1935.

Saving for provisions of the Government of India Act, 1935.

¹See foot-note 3 on p. 535, *ante*.

²The brackets and letter “(h)” were substituted for the brackets and letter “(f)” by s. 11 of the Bengal Medical (Amendment) Act, 1928 (Ben. Act III of 1928).

³See foot-note 2 on p. 535, *ante*.

⁴Section 34 was inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act VI of 1914.]

(The Schedule.)

THE SCHEDULE.

*Persons who are entitled to have their names entered
in the Register of Registered Practitioners.*

(See sections 17, 18, 19 and 20.)

1. Every person who is for the time being registered or qualified to be registered under the Medical Acts.

2. Every Doctor, Bachelor or Licentiate of Medicine, or Master of Obstetrics or Master, Bachelor or Licentiate of Surgery, of the University of Calcutta, Bombay, Madras, Allahabad or Lahore.

3. Every person who has been trained in a Government Medical College or School in India ¹[or Burma], or in a Medical School in India ¹[or Burma] not maintained but recognized by the ²[Provincial Government], for the purposes of this schedule, by notification in the ³[*Official Gazette*], and holds a diploma or certificate, granted ⁴[by the Government concerned] or granted by a Medical School not ⁵[maintained by any Government] but recognized as aforesaid, declaring him to be qualified—

- (a) to practise medicine, surgery and midwifery, or
- (b) to perform the duties of a Military Assistant Surgeon, Hospital Assistant or Sub-Assistant Surgeon.

¹These words were inserted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 3 on p. 535, *ante*.

³See foot-note 2 on p. 535, *ante*.

⁴These words were substituted for the words " by the Government " by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words " maintained by Government ", *ibid*.

Bengal Act IV of 1915.

[The Bengal Embankment (Sundarbans) Act, 1915].¹

(14th April 1915.)

An Act to extend to the Sundarbans certain enactments relating to Embankments.

WHEREAS it is expedient to extend to the Sundarbans certain enactments relating to embankments ;

And whereas the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

55 & 56
Vict., c.
14.

It is hereby enacted as follows :—

1. This Act may be called the Bengal Embankment (Sundarbans) Act, 1915. Short title.

2. The following enactments are hereby extended to the Sundarbans, as excluded under section 1 of the Bengal Embankment Act, 1882, namely : Extension of enactments to the Sunderbans.

Ben. Act
II of 1882.

(1) the following portions of the Bengal Embankment Act, 1873, namely, section 12, section 13, the proviso to section 21, sections 26, 27, 28 and 29, and Schedules B, C and D, subject to the amendments made in the said sections 12, 21 and 26 by the second paragraph of section 2 of the Bengal Embankment Act, 1882 ; and

Ben. Act
VI of 1873.

(2) the Bengal Embankment Act, 1882, except such portions thereof as have been repealed.

XXXII
of 1855.
Ben. Act
VII of
1866.

3. (1) The Bengal Embankment Acts, 1855 and 1866, are hereby repealed. Repeal.

(2) The words and figures “ the Sundarbans, as defined under the provisions of clause 2, section 13, Regulation III of 1828, and ”, in section 1 of the Bengal Embankment Act, 1882, are hereby repealed.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1914, Pt. IV, p. 94 ; and for Proceedings in Council, see *ibid.*, Pt. IVA, pp. 896 and 897, and see *Calcutta Gazette*, 1915, Pt. IVA, pp. 11 and 26-33.

Bengal Act V of 1915.

(The Bengal Decentralization Act, 1915).¹

(27th October 1915.)

An Act to decentralize and otherwise to facilitate the administration of certain enactments in force in Bengal.

WHEREAS it is expedient to decentralize and otherwise to facilitate the administration of certain enactments in force in Bengal ;

And whereas the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

55 & 56
Vict., c. 14.

It is hereby enacted as follows :—

1. This Act may be called the Bengal Decentralization Act, 1915. Short title.

2. The enactments specified in the third column of the schedule are hereby amended, to the extent and in the manner specified in the fourth column, in the areas specified in the fifth column thereof. Amendment of certain enactments.

3. Any appointment, notification, order, scheme, rule, form or by-law made or issued by an authority for the making or issuing of which a new authority is substituted by or under this Act, shall, unless inconsistent with this Act, be deemed to have been made or issued by such new authority unless and, until superseded by an appointment, notification, order scheme, rule, form or by-law made or issued by such new authority. Saving of orders, etc., issued by previous authorities.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1915, Pt. IV, pp. 27 and 28 ; and for Proceedings in Council, see *ibid*, Pt. IV A, pp. 422-426 and 465 and 466.

[Ben. Act V of 1915.]

THE SCHEDULE.

[Not printed here. Amendments incorporated in their parent Acts.]

Bengal Act III of 1918.

[The Bengal (Aliens) Disqualification Act, 1918].¹

(20th March 1918.)

An Act to disqualify certain persons from voting at elections of, or being elected or appointed as members of, or holding office in, local bodies in Bengal.

WHEREAS it is expedient to disqualify certain persons from voting at elections of, or being elected or appointed as Commissioners of the Corporation of Calcutta or of any other Municipality in Bengal, or as members of District or Local Boards or of Union Committees therein, and also to disqualify them from holding office in any such body ;

Preamble.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal (Aliens) Disqualification Act, 1918.

Short title, commencement and local extent.

(2) It shall come into force on such date² as the ³[Provincial Government] may direct by notification in the ⁴[Official Gazette].

(3) It extends to the whole of Bengal.

2. [Definition] Omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Ben. Act
III of
1899.
Ben. Act
III of
1884.
Ben. Act
III of
1885.

3. Notwithstanding anything contained in the Calcutta Municipal Act, 1899⁵ the Bengal Municipal Act, 1884,⁶ and the Bengal Local Self-Government Act of 1885, or in any rule or by-law made under any of the said Acts, no person who is not a British subject or a subject of any State in India shall be qualified to vote at the election of, or to be a candidate for election as a Commissioner of the Corporation of Calcutta or of any other Municipality in Bengal, or as a member of any District or Local Board or Union Committee therein or to hold the office of Chairman, Deputy Chairman or Vice-Chairman of any such body under the Calcutta Municipal

Persons disqualified from voting at elections of, or being members of, or holding office in, local bodies.

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1918, Pt. IV, p. 2 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pp. 196 and 197, and 289-291.

²The 1st April 1918, see Notification No. 827M., dated the 21st March, 1918, *Calcutta Gazette*, 1918, Pt. IB, p. 217.

³These words were substituted for the words " Local Government " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words " *Calcutta Gazette* ", *ibid*.

⁵The Calcutta Municipal Act, 1899, has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

⁶The Bengal Municipal Act, 1884 (Ben. Act III of 1884) has been repealed and re-enacted by the Bengal Municipal Act, 1932 (Ben. Act XV of 1932.)

[Ben. Act III of 1918.]

(Sec. 3).

Act, 1899,¹ the Bengal Municipal Act, 1884², or the Bengal Local Self-Government Act of 1885, nor shall such person be appointed to be a Commissioner or a member or to hold any such office under any of the said Acts; and

Ben. Act
III of
1899.
Ben. Act
III of
1884.
Ben. Act
III of
1885.

if, on the date when this Act comes into force, any such person is holding any such office or is a Commissioner of the Corporation of Calcutta or of any other Municipality in Bengal or a member of any District or Local Board or Union Committee therein under any of the said Acts he shall notwithstanding anything contained in those Acts, be deemed to have vacated his office or seat from such date, and such vacancy shall be filled up in the same manner as if it were caused by resignation duly accepted:

Provided that the ³[Provincial Government] may, ⁴* * * by notification in the ⁵[*Official Gazette*], exempt from the provisions of this section, with effect from the commencement of this Act or from such date as may be specified in the notification, any person or class of persons who are not British subjects or subjects of any State in India.

¹See foot-note 5 on p. 551, *ante*.

²See foot-note 6 on p. 551, *ante*.

³See foot-note 3 on p. 551, *ante*.

⁴The words "with the approval of the Governor General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

⁵See foot-note 4 on p. 551, *ante*.

Bengal Act IV of 1918.

(The Serampore College Act, 1918).¹

(1st May 1918.)

*An Act to supplement, and in certain matters to supersede,
the Royal Charter of Incorporation and the Statute and
Regulations of the Serampore College.*

WHEREAS, on the 23rd day of February, 1827, the institution established in Serampore, Bengal, and known as the Serampore College, was incorporated by Royal Charter granted by his late Danish Majesty, King Frederick the Sixth, with the powers and privileges in the said Royal Charter set forth, including the power of conferring upon the students of the said College degrees of rank and honour according to their proficiency in science : Preamble.

And whereas by Article VI of the Treaty of Purchase, dated the 22nd February, 1845, transferring Serampore to the British Government, it was provided that the rights and immunities granted to the Serampore College by the said Royal Charter, as translated and contained in Schedule I to this Act, should not be interfered with, but should continue in force in the same manner as if they had been obtained by a Charter from the British Government, subject to the general law of British India ;

And whereas Statutes and Regulations for the better government of the said College and management of its concerns, as contained in Schedule II to this Act, were, on the 12th day of June, 1833, made and established under the powers conferred by Article 4 of the said Royal Charter ;

And whereas, under the provisions of the said Royal Charter, the Council of the College consists of a Master or President and two or four members elected as provided in the said Statutes and Regulations, and the management of the College and its general order and government is vested in the Master and Council, and the said power of conferring degrees of rank and honour is vested in the first Council and their successors for ever ;

And whereas it is considered that in order to give effect, under the conditions now existing, to the intentions of his late Danish Majesty and of the founders of the said College, that is to say, to promote piety and

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1918, Pt. IV, p. 18 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pp. 198 and 199 and 291-297 and 627-633.

[Ben. Act IV

(Secs. 1, 2.)

learning, particularly among the native Christian population of India, the amendment of the constitution of the College, by the enlargement of the Council on an interdenominational basis, with power to delegate some of its functions, in manner hereinafter appearing, is required ;

And whereas the present Council of the said College consists of the Reverend George Pearce Gould, M.A., D.P., Master and President, George Barclay Leechman, Esq., Sir George Watson Macalpine, L.L.D., the Reverend Robert Forman Horton, M.A., D.D., and the Reverend George Howells, M.A., Ph.D., Principal of the College ;

And whereas it is deemed expedient by the Governor in Council, with the consent of the said Council of the Serampore College, that a Faculty and Senate be constituted for the said College in manner hereinafter appearing and that suitable standards be imposed in regard to any secular degrees that may hereafter be conferred by the said Council under the terms of the said Royal Charter ;

And whereas it is necessary to make provision for the above purposes by subjecting the said Royal Charter, Statutes and Regulations to an Act of the legislature under the general law of British India in accordance with the terms of the aforesaid Treaty ;

And whereas the previous sanction of the Governor General in Council has been obtained to the passing of this Act ;

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Serampore College Act, 1918.

Constitution of the Council.

2. (1) The Council of the Serampore College as constituted by the Royal Charter of the 23rd day of February, 1827, shall be enlarged so as to consist of not less than five nor more than sixteen ordinary members, including the Master, as the Council may from time to time determine. The first Council constituted under this section shall include the present Master and President and the other present members.

(2) At least one-third of the members of the Council shall be members of the Baptist denomination.

of 1918.]

(Secs. 3-8.)

(3) The Master shall be the President of the Council.

(4) The Principal of the College, if not an ordinary member, shall be an additional member of the Council *ex-officio* during his term of office as Principal of the College.

(5) Until otherwise determined by by-law made under section 14, three members of the Council shall form a quorum.

3. Any member of the Council may at any time resign his office by notice in writing to the Master, provided that no such resignation shall be deemed to take effect so long as the total number of members of the Council shall by reason thereof be less than five.

Resignation
of Members.

4. On any vacancy occurring in the office of Master the remaining members of the Council shall elect another person, whether one of their number or not, to fill his place.

Election of
Master.

5. The Council shall, within one year from the date of the commencement of this Act, constitute and appoint in the manner prescribed in section 6 a body to be known as the College Faculty.

The College
Faculty.

6. (1) The Faculty shall consist of the Principal (who shall be its President) and such of the professors and other officials and functionaries of the College as may be appointed by the Council in accordance with by-laws made under section 14.

Constitution
of the College
Faculty.

(2) The Council shall from time to time prescribe and declare by order in writing the powers and duties of the Faculty, and may remove any member thereof.

7. The Council may delegate to the Faculty all or any of the powers and duties of the Council and Master, which concern only the internal management of the College and its general order and good government.

Delegation
of Council's
powers
and duties.

8. The Council shall, within one year from the date of the commencement of this Act, constitute and appoint in the manner prescribed in section 9 a body to be known as the Senate of the College.

The Senate of
the College.

*(Secs. 9-11.)***Constitution of
the Senate.**

9. The Senate shall consist of the Principal (who shall be convenor) and not less than twelve nor more than eighteen persons as the Council may from time to time determine, to be appointed by the Council :

Provided that—

- (a) at least one and not more than three representatives of each of the following Christian denominations, viz., Anglican, Baptist, Congregational, Lutheran, Methodist, Presbyterian and Syrian, shall, as far as practicable, be members of the Senate ;
- (b) at least two-thirds of the members shall be persons other than professors, officials or functionaries of the College ;
- (c) not less than one-sixth of the members shall be members of the College Faculty.

**Term of office
of members of
the Senate.**

10. (1) Subject to the provisions of clause 11 of the Statutes and Regulations of the College, which shall be deemed to apply to members of the Senate, each member of the Senate shall hold office for a period of five years, at the expiration of which period he shall retire, but he shall be eligible for re-appointment :

Provided that the Principal shall not, during the term of his office as Principal, be subject to retirement, unless he becomes disqualified under the provisions of clause 11 of the Statutes and Regulations.

(2) Any member of the Senate may, by notice in writing to the Master, resign his membership at any time.

**Duties of
the Senate.**

11. The Senate shall frame courses of study and make rules for the conduct of examinations, and shall, subject to the control of the Council, determine the qualifications for degrees and diplomas, and do and perform all other matters and things necessary or proper for or relating to the determination of the eligibility of candidates for degrees, diplomas and certificates to be conferred by the Council.

of 1918.]

(*Secs. 12-14.*)

12. Subject to the provisions of this Act, the Senate shall make rules and regulations for the convening of its meetings and for the proper conduct of its business.

Power of the Senate to make rules and regulations.

13. If, at any time, the Council shall intend to grant degrees in any branch or branches of knowledge and science other than theology, such degrees shall be confined to students who shall have received regular instruction at the Serampore College; and before the Council proceeds to grant such degrees, it shall satisfy ¹[the Provincial Government] as to the adequacy—

Granting of degrees.

(1) of the establishment and equipment of the College;

(2) of the academic standard to be maintained; and

(3) of the financial provision made therefor:

Provided that the said Government, on ceasing to be so satisfied, may withdraw their approval of the granting of such degrees.

14. Subject to the provisions of this Act and of the said Royal Charter, Statutes and Regulations, so far as they are not inconsistent therewith, the Council shall make by-laws providing for and regulating the following matters, namely :—

Power of the Council to make by-laws.

(a) the convening of meetings of the Council;

(b) the quorum to be required at meetings of the Council and the conduct of business at such meetings;

(c) the appointment of members of the Council, Faculty and Senate;

(d) the duties to be performed by the Faculty under the direction and control of the Council;

(e) the conferring of degrees, diplomas and certificates on the recommendation of the Senate;

¹These words were substituted for the original words by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

[**Ben. Act IV***(Sec. 15.—Schedule I.)*

- (f) the terms and tenure of appointments, duties, emoluments, allowances and superannuation allowances of the Principal, Professors, Fellows, Tutors and other officers of the College and of its servants ;
- (g) the finances and accounts of the College and the investment of its funds ;
- (h) the person or persons by whom, and the manner and form in which, contracts by or on behalf of the College may be entered into, varied or discharged, and deeds, agreements, contracts, cheques, and other negotiable instruments and documents may be signed or executed on behalf of the College, and minutes and proceedings of meetings of the Council, Faculty or Senate may be authenticated or evidenced so as to bind the College and be receivable in evidence in accordance with the provisions of the Indian Evidence Act, 1872 ; I of 1872.
- (i) the custody and use of the common seal ; and
- (j) generally all such other matters as may be required or authorized under this Act and the said Royal Charter, Statutes and Regulations, so far as they are not inconsistent with this Act.

Effect of Act.

15. The provisions of the said Royal Charter and of the Statutes and Regulations made thereunder, so far as they are contrary to or inconsistent with any of the terms of the Act, shall be deemed to be superseded from the date of the commencement of this Act :

Provided that nothing in this Act shall render invalid any acts performed, duties imposed or liabilities incurred prior to the date on which this Act comes into force in accordance with the terms of the said Royal Charter, and of the Statutes and Regulations made thereunder.

SCHEDULE I.

[*See Preamble and sections 2(I), 14 and 15.*]

Charter of Incorporation of the Serampore College.

WE Frederick the Sixth, by the Grace of God King of Denmark, the Vendors and Gothers, Duke of Slesvig Holsten, Stormarn, Ditmarsken, Limesborg and Oldenborg, by these writings make known and publicly declare, that whereas William Carey and Joshua Marshman, Doctors of Divinity, and John Clark Marshman, Esq., inhabitants of our town of Frederiksnagore (or Serampore) in Bengal, being desirous of founding a College to promote piety and learning

of 1918.]

(Schedule I.)

particularly among the native Christian population of India, have to secure this object erected suitable buildings and purchased and collected suitable books, maps, etc., and have humbly besought us to grant unto them and such persons as shall be elected by them and their successors to form the Council of the College in the manner to be hereafter named, our Royal Charter of Incorporation that they may the more effectually carry into execution the purposes above-mentioned: --We being desirous to encourage so laudable an undertaking have of our special grace and free motion ordained, constituted, granted and declared, and by these presents We do for ourselves, our heirs and successors ordain, constitute, grant and declare :

1. That the said William Carey, Joshua Marshman and John Clark Marshman, and such other person or persons as shall successively be elected and appointed the Council of the said College, in the manner hereafter mentioned, shall by virtue of these presents be for ever hereafter one body politic and incorporate by the name of the Serampore College for the purposes aforesaid to have perpetual succession and to have a common seal and by the said name to sue and to be sued, to implead and be impleaded, and to answer and be answered unto in every court and place belonging to us, our heirs and successors.

2. And We do hereby ordain, constitute and declare that the persons hereby incorporated and their successors shall for ever be competent in law to purchase, hold and enjoy for them and their successors any goods and chattels whatsoever and to receive, purchase, hold and enjoy, they and their successors, any lands, tenements or hereditaments whatever and that they shall have full power and authority to sell, exchange or otherwise dispose of any real or personal property to be by them acquired as aforesaid, unless the sale or alienation of such property be specially prohibited by the donor or donors thereof, and to do all things relating to the said College or Corporation in as ample a manner or form as any of our liege subjects, or any other body politic or corporate in our said kingdom or its dependencies may or can do.

3. And We do hereby ordain, grant and declare that the number of Professors, Fellows or Student Tutors and Students shall be indefinite and that the said William Carey, Joshua Marshman and John Clark Marshman shall be the first Council of the said College, and that in the event of its appearing to them necessary during their lifetime, or in the case of the death of any one of the three members of the said first Council, the survivors or survivor shall and may under their respective hands and seals appoint such other person or persons to be members of the Council of the College, and to succeed each other so as to become members of the said Council in the

(Schedule I.)

order in which they shall be appointed, to the intent that the Council of the said College shall for ever consist of at least three persons.

4. And We do hereby further ordain, grant and declare, that for the better government of the said College and the better management of its concerns, the said William Carey, Joshua Marshman and John Clark Marshman, the members of the first Council, shall have full power and authority for the space of ten years from the date of these presents, to make and establish such Statutes as shall appear to them useful and necessary for the government of the said College, in which Statutes they shall define the powers to be entrusted to their successors, to the Professors, the Fellows or Student Tutors and the other officers thereof, and the duties to be performed by these respectively for the management of the estates, lands, revenues and goods—and of the business of the said College, and the manner of proposing, electing, admitting and removing all and every one of the Council, the Professors, the Fellows or Tutors, the officers, the students and the servants thereof, and shall make and establish generally all such other Statutes as may appear to them necessary for the future good government and prosperity of the said College, provided that these Statutes be not contrary to the laws and Statutes of our realm.

5. And We do hereby further ordain, grant and declare that the Statutes thus made and established by the said three members of the first Council and given or left in writing under their respective hands, shall be valid and in full force at the expiration of ten years from the date of these presents, so that no future Council of the College shall have power to alter, change or vary them in any manner whatever, and that the Statutes shall for ever be considered the constitution of the said College. And We do hereby appoint and declare that these Statutes shall be made and established by the said William Carey, Joshua Marshman and John Clark Marshman alone, so that in case either of them should die before the expiration of ten years, the power of completing or perfecting these Statutes shall devolve wholly on the survivors or survivor; and that in case all three of them should die before the expiration of ten years, the Statutes which they have left in writing under their hands, or under the hand of the last survivor among them, shall be considered “The Fundamental Statutes and Constitution of Serampore College”, incapable of receiving either addition or alteration, and shall and may be registered in our Royal Court of Chancery as “The Statutes and Constitution of Serampore College”.

6. And We do hereby further appoint, grant and declare that from and after the completion of the Statutes of the said College in the above said time of ten years, the said Council of the College shall be deemed to consist of a Master

of 1918.]

(Schedule I.)

or President and two or four members who may be Professors or otherwise as the Statutes may direct so that the said Council shall not contain less than three, nor more than five persons, as shall be defined in the Statutes. The Council shall ever be elected as the Statutes of the College may direct, yet the said Master or President shall always previously have been a member of the College; and upon the decease of the said Master or President, the Council of the said College shall be unable to do any act or deed until the appointment of a new Master or President, save and except the appointment of such a Master.

7. And We further appoint, grant and declare that the said William Carey, Joshua Marshman and John Clark Marshman, the members of the first Council, and their successors for ever, shall have the power of conferring upon the students of the said College, native Christians as well as others, degrees of rank and honour according to their proficiency in as ample a manner as any other such College, yet the said Serampore College shall only have the power of conferring such degrees on the students that testify their proficiency in Science, and no rank or other special right shall be connected therewith in our dominions. And We do hereby further appoint, grant, and declare, that after the expiration of the said ten years, the said Council of the College and their successors for ever shall have power to make and establish such orders and by-laws as shall appear to them useful and necessary for the government of the said College, and to alter, suspend or repeal those already made, and from time to time make such new ones in their room as shall appear to them most proper and expedient provided the same be not repugnant to the Statutes of the College or the laws of our realm, and that after the expiration of these ten years any member of the Council shall have power to move the enactment of any new by-law, or the alteration, suspension or repeal of any existing one provided notice of such motion shall have been delivered in writing to the Master and read from the Chair at one previous meeting of the Council of the said College, but that no such motion shall be deemed to have passed in the affirmative, until the same shall have been discussed and decided by ballot at another meeting summoned especially for that purpose, a majority of the members then present having voted in the affirmative: and in this as in all other cases, if the votes be equal, the Master or President shall have the casting vote.

Given at our Royal Palace in Copenhagen on the twenty-third day of February in the year of our Lord one thousand eight hundred and twenty-seven, in the nineteenth year of our reign.

Under our Royal Hand and Seal.

FREDERICK R.

[**Ben. Act IV**]*(Schedule II.)***SCHEDULE II.**

[See Preamble and sections 10 (1), 14 and 15.]

*Statutes and Regulations of the Serampore College.**June 12th, 1833.*

1. Article the Third of the Charter granted by His Danish Majesty, having authorised the first Council of Serampore College in their life-time to nominate under their hand and seal such other person or persons for colleagues or successors as may to them appear most proper so that the Council shall always consist of at least three persons, their successors in the Council shall be competent in like manner to nominate in their life-time under their separate hand and seal such person or persons as they may deem most proper to fill vacancies then existing or which may occur on their demise; members thus nominated and chosen shall succeed to the Council in order of their nomination.

2. It being fixed in the Charter that the Council must consist of the Master or President and at least two, but not more than four members, and that on the demise of the Master no act shall be done until another be elected, the Master and Council for the time being shall appoint the next Master under their separate hand and seal. If on the demise of a Master no one be found thus appointed under the hand and seal of a majority of the Council, the senior member of the Council shall succeed as Master.

3. The Charter having given the casting vote to the Master, in all cases when the votes are equal the casting vote shall lie with the Master, and if there be no Master, it shall lie with the Senior Member of the Council.

4. Learning and piety being peculiar to no denomination of Christians, one member of the Council may at all times be of any other denomination besides the Baptist to preserve the original design of the Institution. However if on the election of a Master a number of the Council be equally divided, that part which is entirely of the Baptist denomination shall have the casting vote, whether it includes the Master or not.

of 1918.]

(Schedule II.)

5. The management of the College, including its revenues and property, the choice of the Professor and Tutors, the admission of students, the appointment of all functionaries and servants and the general order and government of the College, shall ever be vested in the Master and the Council. The Master shall see that the statutes and Regulations of the Council be duly carried into effect, and take order for the good government of the College in all things. His signature is necessary to the validity of all deeds, instruments, documents and proceedings.

6. "The first Council and their successors for ever" being authorized by the Charter "to confer such degrees of rank and honour as shall encourage learning" in the same manner as other Colleges and Universities, they shall from time to time confer degrees in such branches of Knowledge and Science as may be studied there, in the same manner as the Universities in Denmark, Germany and Great Britain. In doing this the Master and Council shall *ad libitum* call in the aid of any or all the Professors of Serampore College. All such degrees shall be perfectly free of expence to the person on whom they may be conferred, whether he be in India, Europe or America.

7. No oaths shall be administered in Serampore College either to the Members of the Council, the Professors and Tutors, or the students. In all cases a solemn promise, duly recorded and signed by the party, shall be accepted instead of an oath.

8. Marriage shall be no bar to any office or situation in Serampore College, from that of the Master to that of the lowest student.

9. The salaries of the Professors and Tutors in Serampore College shall be appointed and the means of support for all functionaries, students and servants be regulated by the Council in such manner as shall best promote the objects of the Institution.

10. It is intended that neither the Master nor any member of the Council in general shall receive any salary. But any Master who may not previously reside in the College shall have a residence there free of rent for himself and his family. And if the Council shall elect any one in Europe or in America, whom they deem eminent for learning and piety, a member of the Council, with a view to choosing him Master should they on trial deem him worthy, the Council shall be competent to appoint him such salary as they may deem necessary, not exceeding, however, the highest given to a Professor.

[Ben. Act IV of 1918.]

(Schedule II.)

11. As the founders of the College deem the belief of Christ's Divinity and Atonement essential to vital Christianity, the promotion of which is the grand object of this institution, no one shall be eligible to the College Council or to any Professorship who is known to oppose these doctrines, and should any one of the Professors or any member of the Council unhappily change his views after his election as to oppose these fundamental doctrines of Christianity, on this being clearly and decidedly proved from his teaching or his writings, he shall vacate the office he previously held. But every proceeding of this nature on the part of the College Council shall be published to the Christian world with the proofs on which it may rest, as an Appendix to the succeeding Report.

12. Members of the Council are eligible from among the Professors of the College, or from among any in India, Europe, or America, whom the College Council may deem suitable in point of learning, piety, and talent.

13. Students are admissible at the discretion of the Council from any body of Christians, whether Protestant, Roman Catholic, the Greek, or the Armenian Church; and for the purpose of study, from the Musalman and Hindu youth, whose habits forbid their living in the College. No caste, colour, or country shall bar any man from admission into Serampore College.

14. Expulsion shall be awarded in cases of open immorality, incorrigible idleness, neglect of the College Statutes and Regulations, or repeated disobedience to the officers of the College.

15. Any person in India, Europe or America shall be at liberty to found any Professorship, or to attach to Serampore College any annual exhibition or prize for the encouragement of learning in the same manner as in Universities of Great Britain, regulating such endowment according to their own will: and it shall be the duty of the College Council to carry such benefactions into effect in strict consonance with the will of the donors as far as shall be consistent with the statutes of the College.

16. It shall be lawful for the first Council of the College or their successors to make and rescind any by-laws whatever, provided they be not contrary to these statutes.

17. The Charter having declared that the number of the Professors and Students in Serampore College remains unlimited, they shall be left thus unlimited, the number to be regulated only by the gracious providence of God and the generosity of the public in India, Europe and America.

Bengal Act No. I of 1919

The Calcutta Hackney-Carriage Act, 1919.

Contents.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title, commencement and extent.
2. Further provisions as to extent.
3. Repeal.
4. Definitions.

CHAPTER II.

REGISTRATION OF HACKNEY-CARRIAGES.

5. Hackney-carriages to be registered annually.
6. Duties of Registering Officer.
7. Power to Registering Officer to delegate his functions.
8. Procedure for registration.
9. License for carriage.
10. Particulars of register and license.
11. Production of carriages for inspection half-yearly.
12. Registration of carriage and owner's license may be cancelled or suspended.
13. Notice to be given of change of ownership.
14. Notice to be given of change of owner's residence or place where carriage is kept.
15. Change of ownership or residence to be entered in register.
16. Penalty for using unregistered carriage.

CHAPTER III.

PLATE ON HACKNEY-CARRIAGE.

17. Plate to be affixed outside carriage.
18. Penalty for using carriage without plate.
19. Owner entitled to new plate on loss or obliteration of former one.
20. Penalty for using obliterated plate or for failing to deliver lost plate when recovered.
21. Plate to be delivered on expiration of registration.
22. Power to take possession of plate on cancellation or suspension of registration.
23. Penalty for using or having counterfeit plate.

CHAPTER IV.**REGISTRATION AND IDENTIFICATION OF HORSES.****SECTION.**

24. Horses to be registered annually.
25. License for horse.
26. Particulars of register and license.
27. Production of registered horses for inspection half-yearly.
28. Identification of horses.
29. Penalty for using horse not bearing identification mark.
30. Cancellation or suspension of registration of horse and owner's license.
31. Application of certain provisions relating to hackney-carriages to horses.

CHAPTER V.**DRIVER'S LICENSE AND TICKET.**

32. Driver of hackney-carriage to have license.
33. Particulars and duration of license.
34. Notice to be given of change of driver's residence.
35. Penalty for not having license, or lending it out.
36. Penalty for permitting unlicensed person to act as driver.
37. Particulars of license to be registered and copy given on payment of fees.
38. Driver to wear metal ticket.
39. Driver entitled to new ticket on loss or obliteration of former one.
40. Penalty for using obliterated ticket or for failing to deliver lost ticket when recovered.
41. License and ticket to be delivered on expiry.
42. Power to take possession of driver's ticket on cancellation or suspension of registration.
43. Penalty for using or wearing counterfeit ticket.
44. Penalty for failing to produce license before Magistrate.
45. Endorsement of conviction, warning or reprimand, on license.
46. Revocation or suspension of driver's license on conviction.
47. Power to Registering Officer to cancel or suspend driver's license.

CHAPTER VI.**FARES, HIRING AND PLYING FOR HIRE.**

48. Owner to keep list of fares inside carriage.
49. Maximum distance to which driver is bound to drive.
50. Penalty for refusing to let a carriage for hire.
51. Penalty on driver and attendant for certain offences.
52. Penalty on driver for refusing to attend at premises of owner.
53. Owner may be summoned to appear before Magistrate and to produce driver or attendant.
54. Procedure on refusal to pay fare.
55. Penalty for destroying carriage-plate, etc.
56. Penalty for wilful injury to carriage.
57. Disputes how to be settled.
58. Table of distances signed by Registering Officer conclusive.
59. Hackney-carriage may ply for hire as stage-carriage.
60. Stands to be appointed.

of 1919.]

CHAPTER VII.

PALANQUINS.

SECTIONS.

61. Palanquins to be registered annually.
62. License for palanquins.
63. Particulars of register and license.
64. Plate to be affixed outside palanquins.
65. Application of certain provisions relating to hackney-carriages to palanquins.
66. Owner to keep list of fares inside palanquins.
67. Licensed for bearers of palanquins.
68. Maximum distance to which palanquins are to be carried.
69. Provisions regarding owners and drivers of hackney-carriages applicable to owners and bearers of palanquins.

CHAPTER VIII.

RICKSHAWS.

70. Rickshaws.

CHAPTER IX.

BY-LAWS.

71. Power to Provincial Government to make by-laws.
72. Penalty for infringement of by-laws.

CHAPTER X.

PROSECUTIONS.

73. Effect of substituted service of summons.
74. *Ex parte* disposal of criminal charges.
75. Liability to fine when incurred.
76. Damage to property to be paid for.

CHAPTER XI.

MISCELLANEOUS.

77. Property left in carriage, palanquin or rickshaw to be deposited in police-station.
78. Penalty for neglecting to deposit property.
79. Property to be returned to owner.
80. Disinfection of hackney-carriage or palanquin after conveying a patient or corpse.
81. Provision for passenger in case of seizure of hackney-carriage or palanquin.
82. (*Omitted.*)
83. Indemnity.
84. Effect when Act extended outside Calcutta.
85. Hackney-carriages outside Calcutta to ply within certain radius.

Bengal Act No. I of 1919.

(The Calcutta Hackney-carriage Act, 1919)¹.

(15th January 1919.)

An Act to consolidate and amend the law relating to hackney-carriages and palanquins and to make certain provisions with regard to rickshaws in Calcutta.

WHEREAS it is expedient to amend the law relating to hackney-carriages and palanquins and to make certain provisions with regard to rickshaws in Calcutta;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Calcutta Hackney-carriage Act, 1919 ;
- (2) It shall come into force on such date² as the ³[Provincial Government] may, by notification, direct; and
- (3) It shall apply in the first instance only to Calcutta.
2. The ³[Provincial Government] may, by notification,—
- (a) extend this Act, or any portion thereof, to any other town or local area; or
- (b) exclude from, or include in, Calcutta, or any other town or local area to which this Act is extended under clause (a), any local area in the vicinity of the same and defined in the notification:
- Short title, commencement and extent.
- Further provisions as to extent.

Provided that no notification under this section shall be published in respect of any area included in a Military Cantonment without the previous sanction of the ⁴[Central Government:]

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1918, Pt. IV, p. 43; and for Proceedings in Council, see *ibid.*, Pt. IVA, pp. 297-299 and 810-816 and 1026-1027 and 1167-1188.

²The 15th July 1919, see Notification No. 1581 M., dated the 17th June, 1919, *Calcutta Gazette*, 1919, Pt. IB, p. 118.

³These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "Governor-General in Council," *ibid.*

[Ben. Act I]

(Chapter I.—Preliminary.—Secs. 3, 4.)

Provided also that, before finally publishing any notification under this section, the ¹[Provincial Government] shall publish a draft of the same in such manner as they may think fit, and any rate-payer or inhabitant of the area affected by such draft may, if he objects to the draft, submit his objection in writing to the ¹[Provincial Government] within six weeks from its publication and the ¹[Provincial Government] shall take such objection into consideration.

Repeal.

3. (1) The Calcutta Hackney-carriage Act, 1891, is hereby repealed.

(2) This repeal shall not affect the validity of anything done or suffered, or of any right, title, obligation or liability which may have accrued under the said Act; and all registrations made, licenses issued, penalties incurred, and other things duly done under the said Act shall, so far as they are consistent with this Act, be deemed to have been respectively made, issued, incurred or done hereunder.

(3) All proceedings now pending, which may have been commenced under the said Act, shall be deemed to be commenced under this Act.

Definitions.

4. In this Act, unless there is something repugnant in the subject or context,—

(1) “bearer” when used with reference to rickshaws includes any person employed to draw or push a rickshaw;

(2) “Calcutta” means, subject to the exclusion or inclusion of any local area by notification under clause (b) of section 2, the area described in Schedule I to the Calcutta Municipal Act, 1899²; Ben. Act
III of
1899.

(3) “the Commissioner of Police” means the officer appointed under section 4 of the Calcutta Police Act, 1866; Ben. Act
IV of
1866.

(4) “hackney-carriage” means any wheeled vehicle, drawn by horses and used for the conveyance of passengers, which is kept, offered or plies for hire by the hour or day or according to distance;

¹See foot-note 3 on p. 569, *ante*.

²Bengal Act III of 1899 has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923), and this reference should now be construed as a reference to Schedule I of the latter Act.

of 1919.]

(Chapter II.—Registration of Hackney-carriages.—Secs. 5-8.)

(5) "horse" includes mule and pony ;

(6) "notification" means a notification published in the ¹*Official Gazette* ;

(7) "palanquin" means a vehicle for the conveyance of passengers which is carried by men ;

(8) "rickshaw" means a two-wheeled vehicle for the conveyance of passengers which is drawn by a man or men ; and

(9) "stage-carriage" means any hackney-carriage, the passengers in which pay or are charged separate and distinct fares, or pay or are charged at the rate of separate and distinct fares, for their respective places or seats therein or conveyance thereby.

CHAPTER II.

REGISTRATION OF HACKNEY-CARRIAGES.

5. Every hackney-carriage in Calcutta shall be annually registered by a Registering Officer, on such date as the Commissioner of Police may direct.

Hackney-carriages to be registered annually.

6. (1) The Registering Officer shall be a Deputy Commissioner of Police specially appointed by the ²[Provincial Government] for this purpose, and he shall keep a register in which he shall enter every hackney-carriage under the class prescribed therefor by by-law made under section 71.

Duties of Registering Officer.

(2) Every act, matter or thing done by the Registering Officer, under or by virtue of this Act, shall be subject to the control of the Commissioner of Police.

7. The Registering Officer may, with the sanction of the Commissioner of Police by general or special order in writing, delegate to any police-officer, not below the rank of sergeant, all or any of the powers and duties conferred or imposed upon the Registering Officer by this Act or any by-law made thereunder, except those conferred or imposed upon him by sections 8, 9, 12, 24, 25, 30, 32 and 61.

Power to Registering Officer to delegate his functions.

8. (1) Any person who is desirous of registering a hackney-carriage, shall apply to the Registering Officer, stating the class in which he desires that the carriage may be registered, and shall submit the carriage for the inspection of the Registering Officer.

Procedure for registration.

¹These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 3 on p. 569, *ante*.

(Chapter II.—Registration of Hackney-carriages.—Secs. 9-11.)

(2) The Registering Officer shall satisfy himself that the municipal tax imposed upon such carriage for the current half-year has been paid, and decide whether the carriage is fit to be registered in the class applied for, and shall register it in that class or refuse to grant the application.

(3) The person in whose name any carriage is registered shall be deemed to be the owner of such carriage for the purposes of this Act.

License for
carriage.

9. (1) The Registering Officer shall, at the time of registration, upon payment of such fee as may be fixed by by-law made under clause (f) of section 71, deliver a license, duly signed by him, to the owner of every hackney-carriage.

(2) Such license shall, if not cancelled or suspended, continue in force for one year from the first day of the month in which the carriage is registered.

Particulars of
register and
license.

10. The following particulars shall be entered in the register, and shall be specified in the license to be given to the owner : -

- (a) the class, and the number assigned to the carriage in the register ;
- (b) the name and residence of the owner, the description of the carriage, and the place where such carriage is to be kept ;
- (c) the number and description of horses to be employed in drawing such carriage ;
- (d) the number of passengers the carriage is licensed to carry ;
- (e) the date on which the license was granted ; and
- (f) such other particulars as may be prescribed by by-law made under section 71 ;

and a certified copy of such particulars shall be furnished to every person applying for the same on payment of a fee of eight annas.

Production of
carriages for
inspection
half-yearly.

11. (1) The owner of every hackney-carriage registered under this Act shall, on receipt of a notice in writing in this behalf, produce the carriage before the Registering Officer, for inspection, at such time as may be specified in the notice within two weeks after the expiration of six months from the date of every such registration.

(2) If the owner of any such carriage fails to produce the same for inspection in accordance with the provisions of sub-section (1), he shall be liable to a fine not exceeding five rupees for every day during which, after the expiry of the period specified in sub-section (1) and before the

of 1919.]

(Chapter II.—Registration of Hackney-carriages.—
Secs. 12-14.)

carriage is produced for inspection, the carriage is used as a hackney-carriage, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

12. The Registering Officer may cancel or suspend, for such period as he thinks fit, the registration of any carriage and the license granted to the owner under this Act, whenever it appears to him that such carriage is unfit for public use, or the horse used therewith is not licensed for that class of carriage, or the harness used with such horse is unfit for public use.

Registration of carriage and owner's license may be cancelled or suspended.

13. (1) Whenever any change takes place in the ownership of a hackney-carriage, if the person to whom such carriage is transferred desires to use it as a hackney-carriage, he shall, before so using it, give to the Registering Officer notice in writing of such transfer.

Notice to be given of change of ownership.

(2) Every such notice shall contain the particulars specified in clauses (a), (b) and (c) of section 10.

(3) If any such person, before giving such notice as aforesaid, uses such carriage as a hackney-carriage, he shall be liable to a fine not exceeding five rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

(4) Every owner of a hackney-carriage registered under this Act shall, within fourteen days of the transfer of such carriage to another person, or of the discontinuance of the use of the carriage as a hackney-carriage, give notice thereof to the Registering Officer, in the case of a transfer stating the name and residence of the transferee.

(5) If any such owner fails to give notice in accordance with the provisions of sub-section (4), he shall be liable to a fine not exceeding five rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

14. (1) Whenever the owner of a hackney-carriage registered under this Act changes his residence or the place where such carriage is kept, he shall, within one week from the date of such change, give to the Registering Officer a notice in writing thereof.

Notice to be given of change of owner's residence or place where carriage is kept.

(2) Every such owner who neglects to give such notice shall be liable, for every such offence, to a fine not exceeding five rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

*(Chapter II.—Registration of Hackney-carriages.—
Sec. 15, 16.)*

Change of ownership or residence to be entered in register.

15. The Registering Officer, on receiving a notice under section 13, sub-section (1) or (4), or section 14, sub-section (1), or after a conviction under section 13, sub-section (3) or (5), or section 14, sub-section (2), shall make the necessary alteration in the register and in the license.

Penalty for using unregistered carriage.

16. (1) If any hackney-carriage is used as such without having been duly registered under this Act, the owner of such carriage shall be liable to a fine not exceeding one hundred rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding three months.

(2) Any police-officer, or any person duly authorized by the Commissioner of Police in that behalf, may seize such carriage together with the horses and harness thereof and remove the same to a police-station :

Provided that, if it be proved on arrival at the police-station or afterwards that any horse so removed has been duly registered under this Act with its harness, that horse and harness shall be released forthwith :

Provided also that any carriage so removed shall be released on the owner thereof furnishing security to the satisfaction of the officer in charge of the police-station for the production of the carriage when required.

(3) Any carriage seized under sub-section (2) which is not released under the second proviso thereto, may be detained at the police station or sent to the Registration office and detained there, until any fine imposed by the Magistrate has been paid.

(4) If the hackney-carriage so seized be not claimed and if any fine imposed be not paid, together with any costs or charges incurred, within fifteen days of such seizure or imposition of such fine, respectively, such carriage may be sold by auction, after previous advertisement of such auction, and the sale-proceeds applied to the payment of the fine and all costs and charges incurred on account of the detention and sale.

(5) The surplus, if any, if not claimed by the owner within a further period of one month, shall be credited and applied in the same manner as fees and fines realized under this Act.

of 1919.]

(Chapter III.—Plate on Hackney-carriage.—Secs. 17-21.)

CHAPTER III.

PLATE ON HACKNEY-CARRIAGE.

17. Upon the registration of any hackney-carriage, the Registering Officer shall cause to be affixed on some conspicuous part of the outside of such carriage a plate, bearing the class and the number of such carriage in the register and the number of passengers which it is licensed to carry.

Plate to be affixed outside carriage.

18. If any hackney-carriage is let, used or plies for hire without having a proper plate affixed thereto under this Act, the owner thereof shall be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

Penalty for using carriage without plate.

19. If, during the year of registration, the words or figures on any plate affixed to a hackney-carriage become indistinct or obliterated, or if the plate is lost or stolen, the owner of such carriage shall produce the carriage before the Registering Officer and, after proving the loss of the plate or on delivering the defective plate, to the Registering Officer, as the case may be, shall be entitled to have a new plate affixed upon payment of a fee of eight annas :

Owner entitled to new plate on loss or obliteration of former one.

Provided that if any plate, in lieu of which a new plate has been affixed under this section, be afterwards recovered, the same shall forthwith be delivered to the Registering Officer.

20. Every owner of a hackney-carriage registered under this Act who uses or permits to be used any plate after the writing thereon has become indistinct or obliterated,

Penalty for using obliterated plate or for failing to deliver lost plate when recovered.

and every person into whose possession any plate which has been lost or stolen comes, and who refuses or wilfully neglects for three days to deliver the same to the Registering Officer as required by the proviso to section 19,

shall, for every such offence, be liable to a fine not exceeding ten rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

21. (1) Upon the expiration or other determination of the registration of a hackney-carriage, the owner of such carriage shall cause the plate affixed thereto under this Act to be delivered to the Registering Officer.

Plate to be delivered on expiration of registration.

(2) Any person who, after the expiration of the period aforesaid, wilfully neglects for seven days to deliver the plate to the Registering Officer,

and every person who uses or retains any plate affixed in respect of a registration which is no longer in force,

(Chapter III.—Plate on Hackney-carriage.—Chapter IV.—
Registration and Identification of Horses.—Secs. 22-25.)

shall, for every such offence, be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

Power to take possession of plate on cancellation or suspension of registration.

Penalty for using or having counterfoit plate.

22. Whenever the Registering Officer cancels or suspends for any period, under section 12, the registration of any hackney-carriage he shall take possession of the plate affixed to such carriage under this Act.

23. (1) Every person who, for the purpose of deception or with a view to avoiding any of the provisions of this Act,

(i) uses or has in his possession any plate resembling or intended to resemble any plate affixed under this Act, or

(ii) uses, affixes or has in his possession any plate issued under this Act,

shall, for every such offence, be liable to a fine not exceeding one hundred rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding one month.

(2) The Registering Officer or any police-officer, may seize any plate used or had as aforesaid, wherever the same may be found.

(3) Whenever a police-officer seizes any plate under subsection (2), he shall forthwith deliver it to the Registering Officer.

CHAPTER IV.

REGISTRATION AND IDENTIFICATION OF HORSES.

Horses to be registered annually.

24. Every horse used, or intended to be used, for drawing a hackney-carriage, together with the harness of such horse, shall be annually registered by the Registering Officer at the time and in the manner provided by Chapter II with respect to the registration of hackney-carriages :

Provided that the Registering Officer may refuse to register any horse if such horse or its harness appears to him to be unserviceable or unfit for public use.

License for horse.

25. (1) The Registering Officer shall, at the time of registration, upon payment of such fee as may be fixed by by-law made under clause (f) of section 71, deliver a license, duly signed by him, to the owner of every horse.

(2) Such license shall, if not cancelled or suspended, continue in force for one year from the first day of the month in which the horse is registered.

of 1919.]

*(Chapter IV.—Registration and Identification of Horses.—
Secs. 26-28.)*

26. (1) The following particulars shall be entered in the register, and shall be specified in the license to be given to the owner, namely :—

Particulars of register and license.

- (a) the class of the hackney-carriage with which the horse is to be used, and whether it is to be used singly or in a pair;
- (b) the name and residence of the owner ;
- (c) the number assigned to the horse in the register ;
- (d) the place where it is intended to keep the horse ;
- (e) the date on which the license was granted ; and
- (f) such other particulars as may be prescribed by by-law made under section 71 ;

and a certified copy of such particulars shall be furnished to every person applying for the same on payment of a fee of eight annas.

(2) All the provisions of this Act in any way relating to the notification to the Registering Officer of the change of ownership and of residence of the owners of hackney-carriages and of the place where such carriages are kept shall be applicable in like manner to the owners of licensed horses.

(3) The person in whose name a horse is for the time being registered shall be deemed to be the owner of such horse for the purposes of this Act.

27. (1) The owner of every horse registered under this Act shall, on receipt of a notice in writing in this behalf, produce the horse and the harness used therewith before the Registering Officer, for inspection, at such time as may be specified in the notice within two weeks after the expiration of six months from the date of every such registration.

Production of registered horses for inspection half-yearly.

(2) If the owner of any such horse fails to produce the same with its harness in accordance with the provisions of sub-section (1) he shall be liable to a fine not exceeding two rupees for every day during which, after the expiry of the period specified in sub-section (1) and before the horse is produced for inspection, the horse is used to draw a hackney-carriage, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

Provided that, before prosecuting the owner under this sub-section, the Registering Officer shall consider any explanation for the failure to produce the horse with its harness that may be put forward by the owner.

28. Upon the registration of any horse, the Registering Officer shall cause to be attached or applied to such horse such mark of identification as may be prescribed by by-law made under section 71.

Identification of horses.

*(Chapter IV.—Registration and Identification of Horses.—
Secs. 29-31.)*

Penalty for using horse not bearing identification mark.

29. (1) If any horse is employed for drawing a hackney-carriage let or used or plying for hire without bearing a mark of identification attached or applied to it under this Act, the owner of such horse shall be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

(2) Any police-officer, or any person duly authorized by the Commissioner of Police in that behalf, may seize such horse with its harness and remove the same to a police-station:

Provided that any horse with its harness so removed shall be released on the owner thereof furnishing security to the satisfaction of the officer in charge of the police-station, for the production of the horse and its harness when required.

(3) Any horse with its harness seized under sub-section (2) which is not released under the proviso thereto, may be detained at the police-station or sent to the Registration Office and detained there, until any fine imposed by the Magistrate has been paid.

(4) If the horse and the harness so seized be not claimed and if any fine imposed be not paid, together with any costs or charges incurred, within fifteen days of such seizure or imposition of such fine, respectively, such horse and its harness may be sold by auction, after previous advertisement of such auction, and the sale-proceeds applied to the payment of the fine and all costs and charges incurred on account of the detention and sale.

(5) The surplus, if any, if not claimed by the owner within a further period of one month, shall be credited and applied in the same manner as fees and fines realized under this Act.

Cancellation or suspension of registration of horse and owner's license.

30. The Registering Officer may cancel, or may suspend for such period as he thinks fit, the registration of any horse and the license granted to the owner under this Act, whenever it shall appear to him that such horse or the harness used therewith is unfit for public use.

Application of certain provisions relating to hackney-carriages to horses.

31. All the provisions of this Act in any way relating to the renewing, producing, using, or taking possession of plates affixed to hackney-carriages shall, in like manner and so far as the same may reasonably be applied, be applicable to the marks of identification attached or applied to horses.

of 1919.]

(Chapter V. *Driver's License and Ticket.*—
Secs. 32-34.)

CHAPTER V.

DRIVER'S LICENSE AND TICKET.

32. (1) No person shall act as a driver of a hackney-carriage without a license granted by the Registering Officer. Driver of hackney-carriage to have license.

(2) No person shall be so licensed unless the Registering Officer, after due inquiry, is satisfied—

- (a) that he is competent to drive a hackney-carriage and has a sufficient knowledge of localities in Calcutta ;
- (b) that he is of sober habits, and has not been convicted of any offence which, in the opinion of the Registering Officer, is of such a nature as to render him unfit to hold a driver's license ; and
- (c) that he is not less than eighteen years of age.

33. (1) Every license granted under section 32, sub-section (1), shall contain — Particulars and duration of license.

- (a) the number of the license ;
- (b) the name, father's name, place of abode and age of the person to whom such license is granted ;
- (c) the date on which the license was granted ; and
- (d) a summary of the more important statutory provisions and by-laws affecting drivers of hackney-carriages;

and shall bear the signature of the Registering Officer.

(2) Every license granted under section 32, sub-section (1), shall, if not cancelled or suspended, continue in force for one year from the first day of the month in which it is granted, and shall thereafter be renewed, provided that the Registering Officer is satisfied that the driver continues to fulfil the conditions prescribed by clauses (a) and (b) of sub-section (2) of that section.

(3) For every such license and for every renewal thereof there shall be paid a fee of two rupees.

34. (1) Whenever a driver licensed under this Act changes his residence, he shall, within one week from the date of such change, give to the Registering Officer a notice in writing thereof. Notice to be given of change of driver's residence.

(2) Every such driver who neglects to give such notice shall be liable, for every such offence, to a fine not exceeding five rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

(Chapter V.—Driver's License and Ticket.—Secs. 35-39.)

Penalty for not having license, or lending it out.

35. If any person acts as the driver of a hackney-carriage, without holding a license in force for the time being,

or transfers, or lends his license, or allows the same to be used by any other person,

he shall, for every such offence, be liable to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

Penalty for permitting un-licensed person to act as driver.

36. If any owner of a hackney-carriage permits any person, who has not obtained a driver's license, or whose license has either expired or been cancelled or suspended, to drive such carriage for hire, he shall be liable, for every such offence, to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days :

Provided that such owner and such licensed driver shall be subject to all the provisions of this Act, for any act done or omitted to be done by such driver during such employment, in like manner as if such driver had been duly licensed.

Particulars of license to be registered and copy given on payment of fee.

37. The particulars of every license which is granted under section 32 shall be entered in the register to be kept for that purpose at the office of the Registering Officer : and a certified copy of such particulars shall be furnished to every person applying for the same on payment of a fee of eight annas.

Driver to wear metal ticket.

38. (1) The Registering Officer shall, at the time of granting a license to any driver of a hackney-carriage, deliver to him a metal ticket bearing the number of his license.

(2) Every driver to whom such ticket is delivered shall, at all times while acting as driver or while attending before any Magistrate, carry such ticket exposed to view.

(3) In case any such driver omits to wear such ticket exposed to view while acting as driver or attending before a Magistrate, he shall be liable to a fine not exceeding ten rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

Driver entitled to new ticket on loss or obliteration of former one.

39. If, during the term of the license, the number on any ticket becomes indistinct or obliterated or the ticket is lost or stolen, the licensed driver shall produce his license before the Registering Officer, and on proving the loss of the ticket or on delivering the defective ticket to the Registering Officer, as the case may be, shall be entitled to have a new ticket upon payment of a fee of eight annas :

Provided that, if any ticket, in lieu of which a new ticket has been issued under this section, be afterwards recovered, the same shall forthwith be delivered to the Registering Officer.

of 1919.]

(Chapter V.—Driver's License and Ticket.—Secs. 40-43.)

40. Every driver licensed under this Act who uses or wears the ticket granted to him after the number thereon has become indistinct or obliterated,

Penalty for using obliterated ticket or for failing to deliver lost ticket when recovered.

and every person into whose possession any ticket which has been lost or stolen comes and who refuses or wilfully neglects for three days to deliver the same to the Registering Officer as required by the proviso to section 39,

shall, for every such offence, be liable to a fine not exceeding ten rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

41. (1) Upon the expiration or other determination of any license granted to a driver under this Act, such driver shall deliver his license and ticket to the Registering Officer.

License and ticket to be delivered on expiry.

(2) Every driver who wilfully neglects for seven days to deliver such expired license and ticket to the Registering Officer,

and every person who uses, wears or retains any such expired license or ticket or any license or ticket other than such as shall have been delivered to him under the provisions of this Act,

and every person to whom any ticket has been delivered under this Act, who lends or transfers such ticket, whether current or expired, to any other person,

and every person who wears or uses the ticket of any other person,

shall, for every such offence, be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

42. Whenever the Registering Officer cancels or suspends for any period, under section 12 or section 30, the registration of any hackney-carriage or horse, as the case may be, he shall take possession of the ticket which was delivered to the driver of such carriage under section 38 or section 39.

Power to take possession of driver's ticket on cancellation or suspension of registration.

43. (1) Every person who, for the purpose of deception, uses or wears any ticket resembling or intended to resemble any ticket granted under section 38 or section 39 shall, for every such offence, be liable to a fine not exceeding one hundred rupees, and in default of payment of fine, to simple imprisonment for a period not exceeding one month.

Penalty for using or wearing counterfeit ticket.

(2) The Registering Officer or any police-officer may seize any such expired counterfeit ticket, wherever the same may be found.

(3) Whenever a police-officer seizes any expired or counterfeit ticket under sub-section (2), he shall forthwith deliver it to the Registering Officer.

(Chapter V. -Driver's License and Ticket.- Secs. 44-47.)

Penalty for failing to produce license before Magistrate.

44. Whenever any driver is summoned to appear before any Magistrate to answer any charge preferred against him under this Act, he shall carry with him his license, and produce the same if required so to do; and any driver who, on such requisition, fails to produce such license shall, for every such offence, be liable to a fine not exceeding five rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding five days.

Endorsement of conviction, warning or reprimand, on license.

45. Whenever a Magistrate convicts a driver of any offence punishable under this Act, or warns him of his liability to punishment for any such offence, or reprimands him in respect of his conduct as a driver, the Magistrate shall endorse on the driver's license:-

- (a) the nature of the offence for which the driver was convicted, the date of the conviction and the penalty imposed, or
- (b) the warning or reprimand given,

as the case may be, and shall inform the Registering Officer of every such endorsement.

Revocation or suspension of driver's license on conviction.

46. (1) Any Magistrate before whom any driver is convicted of any offence, whether under this Act or under any other Act, may cancel his license or may suspend the same for such period as the Magistrate thinks fit, and for that purpose may require the driver, or any other person in whose possession such license and the ticket thereto belonging shall then be, to deliver up the same.

(2) Every driver or other person who, on being so required, refuses or neglects to deliver up the license and ticket, shall be liable, for every such offence, to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

(3) The Magistrate shall forward every license and every ticket delivered to him under sub-section (1) to the Registering Officer, together with a memorandum of his sentence in the case.

(4) The Registering Officer shall enter the fact of such sentence in the register referred to in section 37, and if the license has been suspended, the Registering Officer shall, on application at the end of the period of suspension, re-deliver such license and ticket to the person to whom they were granted.

Power to Registering Officer to cancel or suspend driver's license.

47. (1) If it appears to the Registering Officer that any licensed driver is not a fit person to drive a hackney-carriage, he may cause a notice to be served on such driver, requiring him to appear before the Registering Officer, at such time as may be specified in the notice, for re-examination. Every such notice shall state the reasons for such re-examination.

of 1919.]

(Chapter VI—Fares, Hiring and Plying for Hire.
Secs. 48, 49.)

(2) (a) If such driver fails to appear in pursuance of the notice served under sub-section (1), or

(b) if, upon his appearance, the Registering Officer finds that he is not a fit person to drive the hackney-carriage, or

(c) if the owner of the carriage or of the horse used therewith on being summoned to produce the driver to answer any charge preferred against him under this Act fails to do so,

the Registering Officer may cancel the driver's license or may suspend the same for such period as he thinks fit, and may for that purpose require the driver, or any other person in whose possession such license or the ticket thereto belonging may then be, to deliver up the same :

Provided that, before passing an order under clause (c), the Registering Officer shall consider any explanation for the failure that may be put forward by the driver or the owner, as the case may be.

(3) Every driver or other person who fails to comply with any requisition made upon him under sub-section (2) shall be liable, for every such offence, to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

CHAPTER VI.

Fares, Hiring and Plying for Hire.

48. (1) The owner of every hackney-carriage registered under this Act shall cause to be put up, in such manner and in such position as may be directed by the Registering Officer, on the inside of such carriage, a list in such language or languages as the ¹[Provincial Government] may, by notification, prescribe, showing the amount of fare according to distance and time which may be demanded and taken from the hirer of such carriage.

Owner to keep list of fares inside carriage.

(2) Every owner who fails to comply with the provisions of this section shall, for every such offence, be liable to a fine not exceeding ten rupees, and, in default of payment of fine to simple imprisonment for a period not exceeding seven days.

49. (1) The driver of every hackney-carriage registered under this Act shall drive such carriage to any place which is not more than six miles from the place where the same has been hired, to which he shall be required by the hirer thereof to drive the same.

Maximum distance to which driver is bound to drive.

¹See foot-note 3 on p. 569, ante.

[Ben. Act I

(Chapter VI.—Fares, Hiring and Plying for Hire.—Secs. 50, 51.)

(2) When any carriage is hired by time, the driver thereof shall drive the same at a rate not less than six miles an hour in the case of first and second class carriages, and five miles an hour in the case of any other class of carriage.

(3) Any such driver who, without sufficient excuse (the burden of proving which excuse shall lie upon him), fails to comply with the provisions of this section shall be liable to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

Penalty for
refusing to let a
carriage for hire.

50. Any owner, driver, or person in charge of any hackney-carriage registered under this Act, who, without sufficient excuse (the burden of proving which excuse shall lie upon him), refuses to let such carriage for hire, shall, on the complaint of the aggrieved party or of any public officer or servant, be liable, for every such offence, to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days; and shall also pay to the party complaining such compensation as the Magistrate thinks fit.

Penalty on
driver and
attendant for
certain offences.

51. Every driver or attendant of a hackney-carriage who—

- (a) is drunk during his employment ;
- (b) makes use of insulting or abusive language or gesture during his employment ;
- (c) stands (elsewhere than at some stand or other place appointed for the purpose) or loiters, for the purpose of being hired, in or upon any public street, road or place ;
- (d) suffers his carriage to stand for hire across any street or alongside of any other carriage ;
- (e) refuses to give way (when he reasonably and conveniently may do so) to any other carriage ;
- (f) wilfully obstructs or hinders the driver of any other carriage in taking up or setting down any passenger into, or from, such other carriage ;
- (g) wrongfully prevents or endeavours to prevent the driver of any other carriage from being hired .
- (h) demands or takes more than the proper fare to which he is legally entitled ;
- (i) refuses to admit and carry in his carriage the number of passengers which such carriage is licensed to carry ;
- (j) carries more than such number of passengers ;

of 1919.]

(Chapter VI.—*Fares, Hiring and Plying for Hire.*—Secs. 52, 53.)

- (k) refuses to carry by his carriage such quantity of luggage as is prescribed by by-law made under section 71 ;
- (l) being hired, permits or suffers any person to be carried in, or upon, or about such carriage during such hire, without the consent of the person hiring the same ;
- (m) drives in the carriage any animal which is not so secured as to be under the control of the driver ;
- (n) refuses to let a carriage on hire by time or distance as the hirer may require ;
- (o) being hired by time or distance, before he has been discharged by the hirer, wilfully deserts from the hiring ;
- (p) plies for hire with any carriage or horse which shall be at the time unfit for public use ;
- (q) disobeys any direction given by a police-officer for the regulation of traffic and the control of carriages on hackney-carriage stands ;
- (r) leaves his carriage unattended in any street or public place ;
- (s) allows his carriage to be used by any person for the purpose of soliciting any other person to immorality,

shall be liable to a fine not exceeding one hundred rupees or to imprisonment for a period not exceeding two months.

52. Any licensed driver, employed as a driver by the owner of any hackney-carriage registered under this Act, who, without sufficient excuse, refuses or neglects to attend at the premises where such carriage is kept for the purpose of driving any such carriage, whereby such owner is prevented from letting out the same, shall be liable, for each offence, to a fine not exceeding ten rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding seven days.

Penalty on driver for refusing to attend at premises of owner.

53. (1) When a complaint is made before a Magistrate against the driver or attendant of a hackney-carriage registered under this Act for any offence committed by him against the provisions of this Act, or any by-law made thereunder, such Magistrate may, if the driver or attendants fails to appear, forthwith summon the owner of the carriage or of the horse used therewith, or both such owners, as he may consider necessary, personally to appear and to produce the driver or attendant of such carriage to answer the complaint.

Owner may be summoned to appear before Magistrate and to produce driver or attendant.

(2) If any such owner, without reasonable excuse, neglects or refuses to appear personally, or to produce the driver or attendant in compliance with a summons issued under subsection (1), he shall be liable to a fine not exceeding fifty

[Ben. Act I*(Chapter VI.—Fares, Hiring and Plying for Hire.—
Secs. 54-57.)*

rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days, and so from time to time, as often as he shall be so summoned, until such driver or attendant shall be produced by him :

Provided that if such owner, without reasonable excuse, neglects or refuses to appear personally, or to produce such driver or attendant on the second or any subsequent summons requiring him so to do, the Magistrate may proceed to hear and determine the complaint in the absence of the owner and the driver or attendant, as the case may be, or any of them.

procedure on
refusal to pay
fare.

54. (1) If any person who has hired a hackney-carriage registered under this Act, and who, without sufficient excuse, refuses to pay to the owner or driver thereof, on demand, the proper fare to which he is entitled, the Magistrate may order payment of such fare, and also of such compensation for loss of time as shall seem reasonable.

(2) If any person who has used any such carriage attempts to evade payment of the fare, or any portion of the same, he shall be liable to a fine not exceeding fifty rupees, or to simple imprisonment for a period not exceeding fourteen days in addition to the payment of such fare and compensation, as hereinbefore mentioned.

Penalty for
destroying
carriage-plate,
etc.

55. Any person who maliciously or knowingly tears, destroys, defaces, obliterates or removes any plate, table of fares, driver's ticket or mark of identification which has been affixed, put up, granted, attached or applied under the provisions of this Act, shall be liable for every such offence to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

Penalty for
wilful injury
to carriage.

56. Any person using a hackney-carriage registered under this Act who wilfully injures the same, shall be liable to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days ; and shall also pay to the owner of the carriage such compensation for the injury, as the Magistrate may direct.

Disputes how
to be settled.

57. (1) In case of any dispute between the hirer and driver of any hackney-carriage registered under this Act,

the hirer may require the driver to drive to the Court of the nearest Magistrate or to the Registering Officer ;

of 1919.]

(Chapter VI.—Fares, Hiring and Plying for Hire.—Secs. 58-60.)

and, if any driver refuses to obey such requisition, the hirer may give such driver into the custody of the nearest police-officer.

(2) The police-officer shall thereupon take the driver and the hirer, together with the carriage and horse, to such Court or Registering Officer,

and the Magistrate or Registering Officer, as the case may be, may hear and determine the dispute in a summary way.

58. In the case of disputes as to the fare to be calculated according to the distance, any table or book signed by the Registering Officer, shall, on proof of such signature, be taken to be conclusive evidence of the distances therein stated.

Table of distances signed by Registering Officer conclusive.

59. (1) Any hackney-carriage registered under this Act may ply for hire as a stage-carriage.

Hackney-carriage may ply for hire as stage-carriage.

(2) The owner or driver of a carriage so paying for hire or hired as a stage-carriage shall not be subject to any by-law made under clause (g) of section 71, but shall be entitled to demand and take for the hire of such carriage such fares as shall be agreed upon between him and the several hirers, respectively, subject to any maximum which may be prescribed by the ¹[Provincial Government] by an order in writing.

(3) All the other provisions of this Act shall be applicable to the case of a hackney-carriage plying as a stage-carriage, so far as the same may be applicable in each case.

60. (1) The Corporation of Calcutta shall, in consultation with the Commissioner of Police, from time to time, appoint the places in Calcutta that are to be used as public stands for hackney-carriages.

Stands to be appointed.

(2) Every public stand so appointed shall have a board placed in a conspicuous place on the same, containing a notice in such language or languages as the ¹[Provincial Government] may, by notification, prescribe, stating that the stand is a public stand under this Act and specifying the number of carriages that may stand upon it.

¹See foot-note 3 on p. 569, *ante*.

(Chapter VII.—Palanquins. Secs. 61-63.)

CHAPTER VII.

PALANQUINS

Palanquins to be registered annually.

61. Every palanquin plying for hire in Calcutta shall be registered annually by the officer appointed for registering hackney-carriages, at the time and in the manner provided by Chapter II with respect to the registration of hackney-carriages :

Provided that the Registering Officer may refuse to register any palanquin, or may cancel or suspend for such period as he thinks fit, the registration thereof, whenever such palanquin appears to him to be unfit for public use.

License for palanquins.

62. (1) The Registering Officer shall, at the time of registration, deliver a license, duly signed by him, to the owner of every palanquin.

(2) Such license shall, if not cancelled or suspended continue in force for one year from the first day of the month in which the palanquin is registered.

Particulars of register and license.

63. (1) The following particulars shall be entered in the register and shall be specified in the license to be given to the owner, namely :—

- (a) the number of the palanquin ;
- (b) the name and residence of the owner, and the place where the palanquin is to be kept ;
- (c) the number of persons the palanquin is licensed to carry ;
- (d) the date on which the license was granted ;
- (e) such other particulars as may be prescribed by by-law made under section 71.

(2) All the provisions of this Act in any way relating to the notification to the Registering Officer of the change of ownership or of residence of the owners and drivers of hackney-carriages shall be applicable in like manner to the owners and bearers, respectively, of palanquins.

of 1919.]

(Chapter VII.—Palanquins.—Secs. 64-67.)

64. (1) Upon the registration of any palanquin the Registering Officer shall cause to be affixed on some conspicuous part of the outside of such palanquin a plate bearing the number of such palanquin in the register and the number of persons it is licensed to carry.

Plate to be affixed outside palanquins.

(2) If any palanquin is let, used or plies for hire without having a proper plate affixed thereto under sub-section (1), the owner thereof shall be liable to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

(3) The person in whose name a palanquin is for the time being registered shall be deemed to be the owner thereof for the purposes of this Act.

65. All the provisions of this Act in any way relating to the cancellation or suspension of the registration of hackney-carriages and to the renewing, producing, using or taking possession of plates affixed to hackney-carriages, shall be applicable in like manner to palanquins.

Application of certain provisions relating to hackney-carriages to palanquins.

66. The owner of every palanquin registered under this Act shall cause to be put up, in such manner and in such position as may be directed by the Registering Officer, on the inside of such palanquin, a list in such language or languages as the [Provincial Government] may, by notification, prescribe, showing the amount of fare according to distance and time which may be demanded and taken from the hirer of such palanquin.

Owner to keep list of fares inside palanquins.

67. (1) No person shall act as the bearer of a palanquin registered under this Act unless such person has obtained a license from the Registering Officer in the manner prescribed by Chapter V for drivers of hackney-carriages.

License for bearers of palanquins.

(2) All the provisions of this Act in any way relating to the taking out, granting, renewing, producing or using the licenses, or to the issuing, granting, wearing, using or taking possession of tickets granted to drivers of hackney-carriages, shall be applicable in like manner to the bearers of palanquins.

(3) For every license to act as a palanquin-bearer granted under this Act, there shall be paid a fee of four annas; and for every renewal thereof there shall be paid a fee of two annas.

¹See foot-note 3 on p. 569, *ante*.

(*Chapter VII.—Palanquins.—Chapter VIII.—Rickshaws.
—Chapter IX.—By-laws. —Secs. 68-71.*)

Maximum distance to which palanquins are to be carried.

68. (1) The bearers of every palanquin registered under this Act shall carry such palanquin to any place which is not more than five miles from the place where the same has been hired, to which they shall be required by the hirer thereof to carry the same.

(2) When any such palanquin is hired by time, the bearers thereof may be required to carry it at any rate not exceeding two and a half miles within one hour.

Provisions regarding owners and drivers of hackney-carriages applicable to owners and bearers of palanquins.

69. All the provisions of this Act as to offences committed by or against the owners and drivers of hackney-carriages and the penalties in respect of the same and recovery thereof, and all the remedies given to or against hirers, owners or drivers of hackney-carriages, except the provisions contained in section 53, shall be applicable, so far as the same may reasonably be applied, to the owners and bearers of palanquins.

CHAPTER VIII.

RICKSHAWS.

Rickshaws.

70. All the provisions contained in this Act, relating to palanquins, and the hirers, owners and bearers thereof, shall be applicable, *mutatis mutandis*, and so far as the same may reasonably be applied, to all rickshaws plying for hire in any town or place in which this Act is in force, and to the hirers, owners and bearers of such rickshaws.

CHAPTER IX.

BY-LAWS.

Power to Provincial Government to make by-laws.

71. (1) The ¹[Provincial Government] may make by-laws generally for carrying out the provisions and intentions of

¹See foot-note 3 on p. 569, *ante*.

of 1919.]

(Chapter IX.—By-laws.—Sec. 71.)

this Act; and in particular, and without prejudice to the generality of the foregoing power, they may make by-laws—

- (a) regulating the examination and qualification of drivers of hackney-carriages and bearers of palanquins and rickshaws, and the conditions under which they may be employed;
- (b) prescribing the uniforms to be worn by drivers and attendants of hackney-carriages;
- (c) specifying the description of horses, harness, or other things to be used in hackney-carriages, palanquins and rickshaws, the dimensions and colours of such carriages, palanquins and rickshaws, and prescribing the conditions in which such carriages, palanquins and rickshaws and the horses, harness and other things used therewith, shall be kept;
- (d) prescribing the mark of identification of horses to be used in any hackney-carriage and the manner in which the mark is to be used;
- (e) providing for the division of hackney-carriages into classes (if any);
- (f) prescribing the fees to be paid for the registration of carriages, horses, palanquins and rickshaws, respectively, under this Act, and for alterations to be made in any register kept thereunder;
- (g) prescribing the fares to be paid for the hire of hackney-carriages, palanquins and rickshaws, respectively;
- (h) regulating the quantity of luggage to be carried by hackney-carriages;
- (i) for the inspection of the premises on which any such carriages, palanquins, rickshaws, horses, harness and other things are kept;
- (j) for the protection of weak, lame or sickly horses and the prevention of their use in hackney-carriages;
- (k) for the regulation of the use of horses in hackney-carriages;

(*Chapter IX.—By-laws.—Chapter X.—Prosecutions.—*
Secs. 72-75.)

- (l) for the publication of a table of distances ;
- (m) for regulating or preventing the placing of advertisements on or in hackney-carriages, palanquins or rickshaws ; and
- (n) prescribing particulars to be entered in the registers and licenses under this Act.

(2) By-laws made under this section shall be published in such manner as the ¹[Provincial Government] may direct.

Penalty for
infringement
of by-laws.

72. Whoever infringes any by-law made under this Act shall be liable to a fine not exceeding twenty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding ten days.

CHAPTER X.

PROSECUTIONS.

Effect of
substituted
service of
summons.

73. A summons against a driver of a hackney-carriage registered under this Act for any offence against this Act may be served either on the person accused, or on the owner of the carriage, or on the owner of the horse used therewith, and the service on the owner shall be as effectual as if it had been made on the driver personally.

Ex parte
disposal of
criminal
charges.

74. If, in any prosecution under this Act, the person charged does not appear as directed by the summons, the Magistrate may, upon proof of service, and if no sufficient cause be shown for the non-appearance, proceed to hear and determine the case in his absence.

Liability to
fine when
incurred.

75. (1) No person shall be liable to prosecution for any offence under this Act, unless the complaint respecting such offence be made within one month from the commission of such offence.

(2) For the purposes of this section every omission punishable under this Act shall be deemed to be a continuing offence so long as the omission continues.

¹See foot-note 3 on p. 569, *ante*.

of 1919.]

(Chapter X.—Prosecutions.—Chapter XI.—Miscellaneous.—
Secs. 76-78.)

76. (1) If, through any act, neglect or default on account whereof any person is fined under this Act, any damage to any property has been committed by such person, he shall be liable to make good such damage to the owner of such property as well as to pay such fine. Damage to property to be paid for.

(2) The amount of such damage shall be determined by the Magistrate by whom such person has been fined; and, in default of payment of the amount of such damage on demand, the same may be levied in the same manner as a fine.

CHAPTER XI.

MISCELLANEOUS.

77. (1) If any property is left by any person in a hackney-carriage, palanquin or rickshaw, the driver or bearer thereof, as the case may be, shall, within twenty-four hours, carry such property, if not sooner claimed by the owner thereof, to the nearest police-station, and shall there deposit it with the officer in charge. Property left in carriage, palanquin or rickshaw to be deposited in police-station.

(2) The said officer shall forthwith enter in a book to be kept for that purpose—

- (a) the description of such property ;
- (b) the name and address of the driver or bearer who brings it ;
- (c) the day and hour when it is brought ;
- (d) the name and address of the owner of the hackney-carriage, palanquin or rickshaw in which the property has been left and the registered number of such carriage, palanquin or rickshaw ;

and shall grant a receipt for the same.

(3) The said officer shall also send a copy of every such entry to the Registering Officer.

78. Any driver or bearer who fails to deposit any property left in a hackney-carriage, palanquin or rickshaw within the time prescribed in section 77, sub-section (1), shall be liable to a fine not exceeding fifty rupees, and, in Penalty for neglecting to deposit property.

(Chapter XI.—Miscellaneous. Secs. 79-81.)

default of payment of fine, to simple imprisonment for a period not exceeding fourteen days.

Property to
be returned
to owner.

79. The property entered under section 77, sub-section (2), shall be returned to the person who proves to the satisfaction of the Commissioner of Police or such other police-officer, not below the rank of Inspector, as he may appoint in this behalf, that the same belonged to him, on payment of all costs incurred, together with such reasonable sum to the person who brought the same as the Commissioner or such other officer may determine :

Provided that, if within six months from the date of such deposit no person satisfies the Commissioner or such other officer that he is the owner of the property, the Commissioner may cause the property to be sold, or otherwise disposed of ; and the proceeds, after deducting therefrom the expenses, together with a reasonable sum to the driver or bearer shall be credited and applied in the same manner as fees and fines realized under this Act.

Disinfection
of hackney-
carriage or
palanquin
after
conveying a
patient
or corpse.

80. (1) Every owner of a hackney-carriage or palanquin or the driver or bearer thereof, not providing for disinfection of the carriage or palanquin, at a place appointed by the Registering Officer, immediately after it has, with his knowledge, conveyed any person suffering from any dangerous infectious disorder, or after it has been used for conveying a corpse, and which fact had been previously notified by the hirer to the owner, driver or bearer shall, for every such offence, be liable to a fine not exceeding fifty rupees, and, in default of payment of fine, to simple imprisonment for a period not exceeding fourteen days :

Provided that no such owner, driver or bearer shall be required to convey any person so suffering or any corpse until he has been first paid a sum sufficient to defray the loss and expenses incurred thereby, such sum not to exceed ten rupees in the case of a hackney-carriage and five rupees in the case of a palanquin.

Provision for
passenger in
case of
seizure of
hackney-carriage
or palanquin.

81. If a police-officer has cause to arrest a driver of a hackney-carriage or a bearer of a palanquin for any offence under this Act or any other bailable offence, or to seize a hackney-carriage or palanquin or a horse employed in drawing such carriage for a breach of any of the provisions of this

of 1919.]

(Chapter XI.—Miscellaneous.—Secs. 82-84.)

Act or of any by-law made thereunder, when such carriage or palanquin is being used for the conveyance of a passenger, such police officer shall, if so required by the passenger, permit the carriage or palanquin to proceed to the place to which the passenger desires to proceed, and shall thereafter complete the arrest.

82. [*Fees and fines how to be dealt with.*] Omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

83. No suit shall be maintainable against the Commissioner of Police or any municipal authority, officer or servant or any police-officer or any person acting under the direction of the Commissioner of Police or of any municipal authority, officer or servant or of a Magistrate, or of any person appointed under section 84, sub-section (1), of this Act, in respect of anything lawfully and in good faith and with due care and attention done under this Act or any by-law made thereunder. Indemnity.

84. (1) Whenever this Act is extended to any other town or local area outside Calcutta under clause (a) of section 2, the ¹[Provincial Government] may, by notification, appoint persons, or local authorities, to exercise and perform in such town or area the same powers and duties as are conferred or imposed by this Act on the Corporation of Calcutta and the Commissioner of Police, respectively. Effect when Act extended outside Calcutta.

(2) In each town or local area to which this Act may be extended, for the word "Calcutta" in sections 5, 32, 60, ²[and 61], ³* * shall be read the name of such town or area, ⁴* * *

¹See foot-note 3 on p. 569, *ante*.

²This word and figure were substituted for the figures and word "61 and 82" by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The word and figure "sub-section (2)" which were repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), are omitted.

⁴The words "and for the words 'Calcutta Municipal Fund' in section 82, sub-section (1), shall be read 'the fund of the local authority for such town or area'" were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter XI.—Miscellaneous.—Sec. 85.)

Hackney-car-
riages outside
Calcutta to ply
within certain
radius.

85. (1) Notwithstanding anything contained in this Act, a hackney-carriage registered under this Act in any town or local area outside Calcutta may ply for hire in any place outside Calcutta within a radius of six miles from such town or local area.

(2) All the provisions of this Act shall be applicable to the case of a hackney-carriage plying within such radius so far as the same may be applicable in each case.

Bengal Act No. II of 1919.

(The Bengal Juvenile Smoking Act, 1919.)¹

(15th January 1919.)

An Act for the Prevention of Smoking by Juveniles.

WHEREAS it is expedient to make provision for the Preamble.
prevention of smoking by young persons ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Juvenile Smoking Act, 1919. Short title, local
extent and com-
mencement.

Ben. Act
III of 1899.

(2) It extends in the first instance to Calcutta, as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899² :

Provided that the ³[Provincial Government] may, from time to time, by notification in the ⁴[*Official Gazette*], extend this Act to any other town or place in Bengal.

(3) It shall come into force on such date⁵ as the ³[Provincial Government] may, by notification in the ⁴[*Official Gazette*], direct.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “cigarettes” include cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking ;

(b) “police-officer” means a member of an established police force above the rank of a head constable ; and

(c) “tobacco” means tobacco in any form, and includes any smoking mixture intended as a substitute for tobacco.

3. (1) No person shall sell or give to a person apparently under the age of sixteen years any tobacco, pipes or cigarette papers, whether for his own use or not :

Prohibition
against sale of
tobacco, etc., to
young persons.

Provided that a person shall not be guilty of an offence under this sub-section for selling tobacco,

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1917, Pt. IV, p. 18 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pp. 853-858 and see *Calcutta Gazette*, 1918, Pt. IVA, pp. 1030-1035, and p. 1194, and pp. 1277-1281.

²Bengal Act III of 1899 has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

³These words were substituted for the words “Local Government” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words “*Calcutta Gazette*”, *ibid*.

⁵The 1st February, 1919, see Notification No. 114 San., dated the 27th January, 1919, *Calcutta Gazette*, 1919, Pt. IB, p. 22.

(Secs. 4-6.)

other than cigarettes, to a person apparently under the age of sixteen years if he did not know, and had no reason to believe, that it was for the use of that person.

(2) If any person contravenes the provisions of sub-section (1), he shall be liable on summary conviction before a Magistrate to a fine not exceeding ten rupees, and in the case of a second offence to a fine not exceeding twenty rupees, and in the case of a subsequent offence to a fine not exceeding fifty rupees.

Power of
police-officers
and others
to seize and
destroy tobacco,
etc., in the
possession of
a young person
in certain places.

4. It shall be lawful for a police-officer in uniform, or any other person or class of persons duly authorised by the ¹[Provincial Government] in this behalf, to seize any tobacco, pipes or cigarette papers in the possession of any person apparently under the age of sixteen years whom he finds smoking in any street or public place, and to destroy any such article.

Institution of
proceedings.

5. No Magistrate shall take cognizance of an offence under this Act, except upon a complaint made by, or at the instance of, the parent or guardian of the young person concerned or a police-officer or other person empowered to make a seizure under section 4.

Act not to
apply in certain
cases.

6. The provisions of this Act shall not apply when the person to whom the tobacco, pipes or cigarette papers are sold, or in whose possession they are found, was at the time employed by a manufacturer of, or dealer in, such articles either wholesale or retail, for the purposes of his business.

¹See foot-note 3 on p. 597, *ante*.

Bengal Act IV of 1919.

(The Bengal Primary Education Act, 1919.)

CONTENTS.

PART I.

PRELIMINARY.

SECTION.

1. Short title and extent.
2. Definitions.

PART II.

VOLUNTARY PRIMARY EDUCATION.

3. Statement to be submitted by Municipalities.
4. Commissioners to make provision for primary education.

PART III.

COMPULSORY PRIMARY EDUCATION.

5. Operation of Part III.
6. Primary education when to be declared compulsory.
7. Constitution of School Committee.
8. Duty of guardian to send boy to school.
9. Order of Magistrate to compel attendance.
10. Penalty for failure to obey order.
11. Prohibition of employment of boys.
12. Employer's liability.
13. Delegation of some of the functions of the School Committee.
14. Remission of fees.
15. Power of Commissioners to make rules.
16. Exemption from compulsory education.

PART IV.

EDUCATION CESS.

17. Education cess.

PART IVA.

COMPULSORY PRIMARY EDUCATION OF GIRLS

- 17A. Compulsory primary education of girls.

PART V.

SUPPLEMENTAL.

18. Power of Provincial Government to make rules.
19. Schools to be open to inspection.
20. Certain persons to be deemed public servants.
21. Withdrawal of notification on default.

Bengal Act IV of 1919.

(The Bengal Primary Education Act, 1919).¹

(14th May 1919.)

An Act to provide for the extension of primary education in Municipalities and in certain other areas in Bengal.

WHEREAS it is expedient to provide for the extension of primary education in Municipalities and in certain other areas in Bengal;

It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Primary Education Act, 1919. Short title and extent.

(2) It extends in the first instance to all Municipalities in Bengal :

²Provided that the ³[Provincial Government] may, by a notification published in the ⁴[Official Gazette], extend the provisions of this Act, with such modifications, for the purposes of adaptation, as they may deem fit, to any area in a Union constituted under section 38 of the Bengal Local Self-Government Act of 1885, ⁵[or under section 5 of the Bengal Village Self-Government Act, 1919,] and may authorize the Union Committee ⁶[or the Union Board] for such area to exercise and perform all or any of the powers and duties conferred and imposed on the Commissioners by this Act, subject to such control by the District or Local Board as the ⁷[Provincial Government] may prescribe.

Ben. Act
III of
1885.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) “to attend a recognised primary school” means to be present for instruction at such school for so many and on such days in the year and at such time or times on each day as may be prescribed by the School Committee for such school, subject to the rules and orders of the Education Department of the ⁸[Provincial Government] ;

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1917, Pt. IV, p. 41; and for Proceedings in Council, see *Calcutta Gazette*, 1918, Pt. IVA, pp. 80-84, and 1157-1165, and see *Calcutta Gazette*, 1919, Pt. IVA, p. 34, and pp. 148-220, and 520-553.

²This proviso will be repealed when the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930), comes into force.

³These words were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words “*Calcutta Gazette*,” *ibid.*

⁵These words were inserted by s. 2 of the Bengal Primary Education (Amendment) Act, 1921 (Ben. Act III of 1921).

(Part II.—Voluntary Primary Education.—Sec. 3.)

(2) "Commissioners" means the persons for the time-being appointed or elected to conduct the affairs of a Municipality ;

(3) "guardian" includes a parent or any person who is liable to support, or has the custody of, a boy not being less than six or more than ten years of age ;

(4) "Municipality" means Calcutta, as defined in ¹[clause (11) of section 3 of the Calcutta Municipal Act, 1923], or any place in which the Bengal Municipal Act, ²[1932], is in force ;

Ben. Act
III of
1923.
Ben. Act
XV of
1932.

(5) "primary education" means such elementary education as may be prescribed from time to time for primary schools by the Education Department of the ³[Provincial Government] ;

(6) "recognised primary school" means a school (or a department of a school) appropriated to primary education and for the time being recognised by the Education Department of the ³[Provincial Government] for the purposes of such education ; and

(7) "School Committee" means a committee constituted under section 7.

PART II.

VOLUNTARY PRIMARY EDUCATION.

**Statement to
be submitted by
Municipalities.**

3. Within one year from the commencement of this Act or within such other period as may be prescribed by the ³[Provincial Government] in this behalf, the Commissioners shall submit to the ³[Provincial Government] a detailed statement, in such form as may be prescribed by the ³[Provincial Government], containing the following particulars in respect of the Municipality:—.

- (a) (i) the number of children, not being less than six or more than eleven years of age, within the Municipality;

¹These words and figures were substituted for the words and figures "Clause (7) of section 3 of the Calcutta Municipal Act, 1899" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²This figure was substituted for the figure "1884", *ibid.*

³See foot-note 3 on p. 601, *ante*.

of 1919.]

(Part II.—Voluntary Primary Education.— Sec. 4.)

- (ii) the number of boys, not being less than six or more than ten years of age, therein;
- (b) the school accommodation for the staff of, and the attendance at, existing primary schools ;
- (c) the school accommodation, staff and equipment required if suitable and adequate provision were to be made for the primary education of—
 - (i) all children referred to in clause (a) (i) likely to attend primary schools voluntarily; and
 - (ii) all boys referred to in clause (a) (ii) ;
- (d) the manner in which and the periods within which it will be possible to provide the necessary school accommodation, staff and equipment referred to in clause (c) under the direct management and control of the Municipality;
- (e) the existing expenditure incurred by the Municipality on primary education and the expenditure to be incurred yearly in order to provide such school accommodation, staff and equipment;
- (f) the receipts already available, and the income including the probable receipts from any education cess that may in future be levied under section 17, which it may be estimated will be available to meet such expenditure ; and
- (g) the amount of grant or assistance from the Government which the Commissioners consider would be necessary to enable them to provide for primary education within the Municipality, or any part thereof.

4. The ¹[Provincial Government], after considering the statement required by section 3 and the conditions and resources of the Municipality, and after determining the amount of financial assistance from the Government which may be necessary in order to provide for primary education within the Municipality, may, if satisfied that the Municipality is able to meet the expenditure involved, direct the Commissioners to provide the necessary school accommodation, staff and equipment for all children, not being less than six or more than eleven years of age, likely to attend primary schools voluntarily within the Municipality and to assume the direct management and control of all such schools.

Commissioners to make provision for primary education.

¹See foot-note 3 on p. 601, *ante*.

(Part III.—Compulsory Primary Education—Secs. 5, 6.)

PART III.

COMPULSORY PRIMARY EDUCATION.

Operation of
Part III.

5. The provisions of this Part shall not come into operation until a notification has been issued under section 6, sub-section (2).

Primary educa-
tion when to be
declared compul-
sory.

6. (1) If, after complying with the directions of the ¹[Provincial Government] under section 4, the Commissioners are of opinion that the primary education of all boys, not being less than six or more than ten years of age, should be made compulsory within the Municipality, or any part thereof, they may apply to the ¹[Provincial Government] in such manner as may be prescribed by rules made by the ¹[Provincial Government], for permission to introduce therein compulsory primary education for such boys.

(2) The ¹[Provincial Government], after considering the application and after determining the financial assistance from the Government which may be necessary to provide for compulsory primary education within the Municipality, shall, if satisfied that the Municipality is able to meet the expenditure involved, grant the permission asked for, and the Commissioners shall thereupon cause a notification to be issued declaring that primary education shall be compulsory for all such boys within the Municipality, or any part thereof, as the case may be.

(3) Every notification issued under this section shall be published in the ²[*Official Gazette*] and in the local newspapers, if any, and shall be posted up at the Municipal office and at such other places, as the Commissioners shall deem necessary, specifying the date on and from which primary education shall be compulsory within the Municipality, or any part thereof.

(4) No notification shall be issued by the Commissioners under this section except in pursuance of a resolution passed at a special general meeting convened for the purpose and at which not less than two-thirds of the total number of Commissioners are present.

¹See foot-note 3 on p. 601, *ante*.

²See foot-note 4 on p. 601, *ante*.

of 1919.]

(Part III.—Compulsory Primary Education.—Secs. 7-9.)

7. When a notification has been issued in any Municipality under section 6, sub-section (2), the Commissioners shall appoint a School Committee, to be constituted in such manner as may be prescribed by rules made under section 15 :

Constitution of School Committee.

Provided that a Deputy Inspector or a Sub-Inspector of Schools, at least one Commissioner and one or more residents of the Municipality, other than a Commissioner, shall be members of the Committee.

8. (1) In every area to which the provisions of this Part apply, it shall be the duty of the guardian of every boy, not being less than six or more than ten years of age, residing within that area to cause such boy to attend a recognized primary school unless, in the opinion of the School Committee, there is a reasonable excuse for his non-attendance.

Duty of guardian to send boy to school.

(2) Any of the following circumstances shall be deemed to be a reasonable excuse within the meaning of this section :—

- (a) that there is no recognized primary school within a distance of one mile, measured by the shortest route, from the residence of the boy which he can attend, and to which the guardian has no reasonable objection to send the boy ;
- (b) that the boy is prevented from attending the school by reason of sickness, infirmity, domestic necessity, the seasonal needs of agriculture or of his being the sole breadwinner of his family ;
- (c) that the boy is receiving education in some other satisfactory manner.

9. (1) If the School Committee is satisfied that a guardian who is required under section 8 to cause a boy to attend a recognized primary school, has failed to do so, it shall, after giving a warning in writing to such guardian, apply to a Magistrate for an order to compel the guardian to enforce the attendance of such boy : and the Magistrate shall fix a day for the hearing of the application and cause notice thereof to be given to such guardian.

Order of Magistrate to compel attendance.

(2) On the day fixed for the hearing of the application or on any subsequent day to which it may be adjourned, and

(Part III.—Compulsory Primary Education.—Secs 10-13.)

after hearing the guardian or his authorized agent, if present, the Magistrate, if satisfied that the facts alleged in the application are true, may pass an order directing the guardian to cause such boy to attend a recognized primary school from a date to be specified in such order.

Penalty for failure to obey order.

10. (1) Any guardian who fails to comply with an order passed under section 9 shall, on conviction before a Magistrate, be liable to a fine not exceeding five rupees, and also to a recurring fine not exceeding one rupee for each day after the first during which he continues so to offend.

(2) No Magistrate shall take cognizance of an offence under this section except on the complaint of the School Committee.

Prohibition of employment of boys.

11. No person shall, without the permission of the School Committee, employ any boy, not being less than six or more than ten years of age, who is required to attend a recognized primary school under this Part:

Provided that such permission shall not be necessary if the employment of the boy does not interfere with his attendance at such school.

Employer's liability.

12. (1) The School Committee may prosecute any person who, after due warning, contravenes the provisions of section 11.

(2) Unless such person satisfies the Magistrate that there is a reasonable excuse, within the meaning of section 8, subsection (2), for the non-attendance of the boy, or that the time and nature of employment of the boy are such that he is not prevented from attending a recognized primary school, or that the boy was taken into employment under false representations as to age, residence and other conditions, such person shall, on conviction before a Magistrate, be liable to a fine not exceeding twenty rupees.

Delegation of some of the functions of the School Committee.

13. An application to a Magistrate under section 9 or a complaint to a Magistrate under section 10 or section 12, may be made on behalf of the School Committee by such person as may be authorized by the School Committee by general or special order in this behalf.

of 1919.]

(Part III.—Compulsory Primary Education.—Part IV.—
Education cess.—Secs. 14-17.)

14. When primary education has been made compulsory in any municipality, or any part thereof, if a guardian, who is required under the provisions of this Part to cause a boy to attend a recognized primary school, satisfies the School Committee that he is unable to pay the fees or any part of the fees ordinarily charged in such school, such boy shall be admitted to such school free of charge, or at such reduced fees as the School Committee may determine, for the period during which the guardian is required to cause the boy to attend a recognized primary school. Remission of fees.

15. The Commissioners may, with the previous sanction of the ¹[Provincial Government] make rules prescribing:— Power of Commissioners to make rules.

(a) the manner in which the School Committee shall be constituted, the number of its members, its duties and its mode of transacting business ;

(b) the steps which the School Committee may take to secure the attendance of boys at school.

16. The ¹[Provincial Government] may, by notification in the ²[*Official Gazette*], exempt any class of persons or any community, in any area to which this Act extends, from the operation of this Part. Exemption from compulsory education.

PART IV.

EDUCATION CESS.

17. (1) If the existing resources of any Municipality including any grant from the Government are not sufficient to cover the cost of primary education within the Municipality, the Commissioners may, with the previous sanction of the ¹[Provincial Government], impose a tax, to be called the "education cess"; and all amounts derived therefrom shall be devoted solely to the purposes of primary education, whether voluntary or compulsory, within the Municipality. Education cess.

(2) An education cess shall not be imposed unless the Commissioners by resolution, passed at a special general

¹See foot-note 3 on p. 601, *ante*.

²See foot-note 4 on p. 601, *ante*.

[Ben. Act IV]

(Part IV A—Compulsory Primary Education of Girls—Part V.—Supplemental.—Secs. 17A, 18).

meeting convened for the purpose and in favour of which two-thirds of the Commissioners have voted, determine to impose such cess.

(3) The education cess shall be levied in such manner as may be prescribed by rules made by the ¹[Provincial Government], and the cess so levied shall be a rate amounting to the sum required, after deducting the Government grant, the school receipts and the receipts from endowments and contributions, to meet the expenditure on primary education, together with ten *per cent.* above such sum to meet the collection charges and the probable losses due to non-realization from defaulters.

²PART IVA.*Compulsory Primary Education of Girls.*

Compulsory
primary
education of
girls.

³17A. The provisions of this Act relating to the compulsory primary education of boys shall apply *mutatis mutandis* to the compulsory primary education of girls not being less than six or more than ten years of age :

Provided that before making the application referred to in sub-section (1) of section 6 the Commissioners shall submit to the ¹[Provincial Government] a statement containing in respect of girls within the municipality such of the particulars set forth in section 3 as the ¹[Provincial Government] may think fit to require, and shall comply with such directions for the provision of accommodation, staff and equipment and for the management and control of schools as the ¹[Provincial Government] may issue thereon :

Provided also that in the case of an application to introduce compulsory primary education for girls the ¹[Provincial Government] may if it thinks fit to refuse the permission referred to in sub-section (2) of section 6.

PART V.

SUPPLEMENTAL.

Power of
Provincial
Government
to make rules.

18. (1) The ¹[Provincial Government] may, after previous publication, make rules to carry out the purposes of this Act.

¹See foot-note 3 on p. 601, *ante*.

²Part IVA (section 17A) was inserted by s. 2 of the Bengal Primary Education (Amendment) Act, 1932 (Ben. Act VII of 1932).

of 1919.]

(Part V.—Supplemental—Secs. 19-21.)

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[Provincial Government] may make rules prescribing the manner in which—

- (a) applications under section 6, sub-section (1), shall be made ; and
- (b) the education cess shall be levied.

(3) All rules made under this section shall be published in the ²[*Official Gazette*].

19. All primary schools maintained by the Commissioners within a Municipality, or any part thereof, under the provisions of this Act shall be open to inspection free of any charge by the inspecting officers of the Education Department of the ¹[Provincial Government] and such other persons as the ¹[Provincial Government] may appoint in this behalf.

Schools to be open to inspection.

20. Every person authorised by the School Committee under section 13 and every officer and servant of the School Committee, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Certain persons to be deemed public servants.

21. When in the opinion of the ¹[Provincial Government] the Commissioners have made default in any of the requirements of Part III of this Act, the ¹[Provincial Government] may, after considering any explanation of the Commissioners, by notification in the ²[*Official Gazette*], stating the grounds of such order, cancel any notification which has been issued under section 6, ³[sub-section (2)].

Withdrawal of notification on default.

¹See foot-note 3 on p. 601, *ante*.

²See foot-note 4 on p. 601, *ante*.

³This word and figure were substituted for the word and figure "sub-section (1)" by s. 3 of the Bengal Primary Education (Amendment) Act, 1932 (Bon. Act VII of 1932).

Bengal Act V of 1919.

(The Bengal Village Self-Government Act, 1919.)

CONTENTS.

PART I.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title, local extent and commencement.
2. Repeal and amendment of certain enactments ; saving of certain provisions.
3. Effect on certain enactments when Act is withdrawn.
4. Definitions.

CHAPTER II.

UNION BOARDS.

5. Power of Provincial Government to declare local areas to be unions.
6. Establishment and constitution of union board.
7. Qualifications of voters and members of union board.
8. President of union board.
9. Vice-president of union board.
- 9A. Leave of absence to president or vice-president of union board.
10. Disqualification of certain persons from voting at election of, or being members of, union boards.
- 10A. Disqualification from being a member of a union board.
11. Term of office of members.
12. Power to remove members.
13. Filling of casual vacancies.
14. Term of office of president or vice-president.
15. Resignation of president, vice-president or member.
16. Removal of president or vice-president.
17. Filling of casual vacancy in office of president or vice-president.
- 17A. Bar to interference by courts in election matters.
- 17B. Election disputes.
- 17C. Validation of acts and proceedings.
18. Incorporation of union boards.
19. Works constructed by a union board to vest in the board.

CONTENTS.

CHAPTER III.

DAFADARS AND CHAUKIDARS.

SECTION.

20. Appointment and dismissal of dafadars and chaukidars.
21. Numbers and salaries of dafadars and chaukidars.
22. Power to fine dafadars and chaukidars.
23. Powers and duties of dafadars and chaukidars.
24. Procedure on arrest by dafadar or chaukidar.
25. Fines to be credited to district chaukidari reward fund.

CHAPTER IV.

POWERS AND DUTIES OF UNION BOARDS.

26. Duties of union boards.
- 26A. Reports of epidemic diseases among men or cattle.
- 26B. Power to union boards to grant rewards for information of the outbreak of any epidemic disease among men or cattle.
27. Powers of union board as to sanitation, conservancy and drainage.
28. Power of union board as to cleansing of unions.
29. Power of union board to control erection of buildings, etc.
30. Power of union board to provide for proper water-supply.
31. Powers of union board as to roads, bridges and water-ways.
- 31A. Stipends.
32. (*Non-primary education-Act areas.*) Establishment of primary schools and dispensaries.
32. (*Primary-education-Act areas.*) Establishment of dispensaries.
- 32A. (*Primary-education-Act areas.*) Establishment and management of primary schools.
- 32AA. Joint committees.
33. Transfer of certain duties from the district or local board to a union board.
34. Prohibition of certain offensive and dangerous trades without licenses.
35. Power of entry.
36. Appointment of establishment for union board.

CHAPTER V.

UNION FUND.

37. Imposition of union rate.
38. Nature of assessment.
39. Procedure of assessment and revision thereof by the union board.
40. Power of district magistrate to revise assessment.
41. Arrear to be recovered by distraint and sale of movable property of defaulter.
42. What property may be distrained and sold for arrears.
43. Distraint and sale of property beyond the limits of the union.
44. Irregularities not to avoid distraint.
- 44A. Disposal of surplus sale-proceeds.
45. Grants-in-aid from district fund.
46. Union fund.

CONTENTS.

of 1919.]

CHAPTER VI.

GENERAL PROVISIONS RELATING TO UNION BOARDS.

Delegation.

SECTION.

47. Delegation of district magistrate's powers and duties.

Disputes.

48. Disputes between union boards.
49. Disputes between a municipal authority and a union board.

Control.

50. Local board to superintend the administration of union boards.
50. District board or local board to superintend the administration[of union boards].
51. Supervision of union boards by commissioners and other officers.
52. Inspection of union board record.
53. Inspection of work or property of union board.
54. Special provision in case of non-payment of chaukidars and staff.
55. Power to provide for performance of duties under section 27 or 30 in case of default by a union board.
55A. Power to dissolve a union board.
56. Power to remove the president or supersede a union board.
57. Consequences of supersession.
58. Power to suspend action of union board.
59. Order of magistrate or district board under section 58 to be reported to the commissioner.

Miscellaneous.

60. Penalty on member, officer or servant being interested in a contract, made with a union board.
61. Power to make compensation for damage.
62. Liability of members.
63. Bar to suits.
64. No suit to be brought until after one month's notice of cause of action.

PART II.

CHAPTER VII.

UNION BENCHES AND UNION COURTS.

Union benches.

65. Constitution of union bench.
66. Jurisdiction of union bench.
67. How case may be instituted.
68. Power of bench to dismiss or to refuse to entertain petition.
69. Dismissal of case for default.

CONTENTS.

[Ben. Act V]

SECTION.

- 70. Proceedings preliminary to trial.
- 71. Bar to appeal from or revision of the order of union bench, but power to order retrial.
- 72. Power of union bench to impose fine or to award compensation.
- 72A. Power of union bench to release certain offenders after admonition or on probation of good conduct.
- 72B. Power of union bench to permit compounding of offences.

Union courts.

- 73. Constitution of union court.
- 74. Jurisdiction of union court.
- 75. Certain suits not to be tried by union court.
- 76. Local limits of jurisdiction of union court.
- 77. How suit may be instituted.
- 78. Action to be taken if suit not triable by a union court.
- 79. Dismissal of suit for default.
- 80. Summons to defendant to appear and answer.
- 81. Postponement on application for transfer.
- 82. *Ex parte* decision.
- 83. No order to be set aside without notice to opposite party.
- 84. Power of union court to determine necessary parties.
- 85. Certain suits not to be tried by union court.
- 86. Decision of union court.
- 87. Instalments.
- 88. Decision of union court to be final ; but power to order retrial.
- 89. Death of parties.
- 90. Fees.
- 91. Execution of decree.
- 91A. Limitation for execution of decree or order.
- 92. (*Omitted.*)

(General provisions relating to union benches and union courts.)

- 93. Procedure by union benches and union courts.
- 94. Persons who are to preside over union bench or union court.
- 95. Union bench or union court not to try case or suit in which the local union board or any member is interested.
- 96. Attendance of witnesses.
- 97. Appearance of parties before union bench or union court.
- 98. Appearance of women.
- 99. Realization of fees, fines, etc.
- 100. Registers and records.
- 100A. Resignation of a member of union bench or union court.
- 100B. Casual vacancies.
- 100C. Delegation of powers by the Provincial Government.
- 100D. Removal of a member of union bench and union court.

of 1919.]

CONTENTS.

PART III.

CHAPTER VIII.

MISCELLANEOUS.

- 101. Power of Provincial Government to make rules.
- 101A. Power of union board to make by-laws.
- 102. Members of union board, etc., not to bid for or buy property sold.
- 103. Membership not a bar to trial of cases.

SCHEDULES.

- I. Enactments repealed or amended.
- II. Offences to be reported by a chaukidar.
- III. Powers and duties which may be delegated by the district magistrate.
- IV. Offences triable by a union bench.

Bengal Act V of 1919.

(THE BENGAL VILLAGE SELF-GOVERNMENT ACT 1919.)¹

(28th May 1919.)

An Act to develop self-government in the rural areas of Bengal.

WHEREAS it is expedient to develop the system of self-government in the rural areas of Bengal;

And whereas the sanction of the Governor General has been obtained under section 79, sub-section (2) and sub-section (3), of the Government of India Act, 1915, to the passing of this Act;

5 & 6, Geo.
V, c. 61.

It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Village Self-Government Act, 1919.

Short title,
local extent and
commencement.

(2) It extends to the whole of Bengal, except the town of Calcutta and any area which has been or may hereafter be constituted a municipality, under the provisions of the Bengal Municipal Act, ²[1932].

Ben. Act
XV of
1932.

(3) It shall come into force in such districts or such parts of districts and on such dates as the ³[Provincial Government] may, by notification, direct, and the ⁴[Provincial Government] may, by notification, withdraw this Act from any district or part of a district.

Explanation.—The words “the town of Calcutta” mean, ⁴[subject to the inclusion of any local area under section 543]

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1918, Pt. IV, pp. 117 and 118, and for proceedings in Council, see *ibid*, Pt. IV-A, pp. 665—672 and 1188—1193, and see *Calcutta Gazette*, 1919, Pt. IV-A, pp. 30-34, 127—146, 315—316 and 688—912.

²This figure was substituted for the figure “1884” by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³These words were substituted for the words “Local Government” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words and figure were substituted for the words and figure “subject to the exclusion or inclusion of any local area by notification under section 637” by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)

[Ben, Act V

(Part I.—Chapter I.—Preliminary.—Secs. 2, 3.)

of the Calcutta Municipal Act, ¹[1923], and subject to the provisions of section 147 of the Calcutta Improvement Act, 1911, the area described in schedule I to the Calcutta Municipal Act, ¹[1923] :

Ben. Act
III of 1923.
Ben. Act
V of 1911.

Provided that this Act shall not come into force in any cantonment ^{2*} * * .

Repeal and amendment of certain enactments ; saving of certain provisions.

2. (1) When any local area is declared to be a union under section 5, the enactments specified in schedule I shall, from the date of election or appointment of the first president of the union board of that union, be repealed or amended to the extent and in the manner mentioned in the fourth column thereof :

Provided that until a new assessment is made under this Act, any assessment, rate or tax which was in force in such area under the provisions of the Bengal Local Self-Government Act of 1885, in so far as they relate to union committees, and of the Village Chaukidari Act, 1870, shall continue to be in force and all sums due on account of such rate or tax shall be realized under the provisions of this Act, and shall be credited to the union fund, and may be expended by the union board by which they are realized.

Ben. Act
III of 1885.
Ben. Act
VI of 1870.

(2) When, in consequence of the repeal of the enactments referred to in sub-section (1), any panchayat or union committee ceases to exist, all the properties, funds and dues which are vested in such panchayat or union committee shall be vested in such union board or boards, and in accordance with such allocation, as may be determined by the district magistrate, whose orders thereon shall be final.

Effect on certain enactments when Act is withdrawn.

3. When the provisions of this Act are withdrawn from any district or part of a district under section 1, sub-section (3), the enactments specified in Schedule I shall be deemed to be revived in such district or part to the extent to which they were modified by that schedule, from the date of the publication of the notification of withdrawal :

Provided that all assessments for the imposition of rates under section 37 shall continue to be in force until a new assessment is made in accordance with the provisions of the Village Chaukidari Act, 1870 ; and all properties, funds and other dues vested in any union board within such district or part of a district shall be vested in such local authorities,

¹This figure was substituted for the figure "1899" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²The words "without the sanction of the Governor General in Council previously obtained" were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1919.]

(Part I.—Chapter I.—Preliminary.—Sec. 4.)

panchayats or persons and in such manner as may be determined by the district magistrate, whose orders thereon shall be final.

4. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

- (1) "building" includes a hut and shed;
- (2) "circle officer" means any person who may be appointed by the ¹[Provincial Government] to exercise the powers and perform the duties of a circle officer under this Act;
- (3) "dafadar" means a head chaukidar;
- (4) "district board" means a district board established under the Bengal Local Self-Government Act of 1885;
- (5) "district magistrate" includes an additional district magistrate.
- (6) "local board" means a local board established under the Bengal Local Self-Government Act of 1885, as amended by this Act;
- (7) "notification" means a notification published in the ²[Official Gazette];
- (8) "road" means any road, street or passage, whether a thoroughfare or not, over which the public have a right of way;
- (9) "subdivisional magistrate" means any magistrate in charge of a subdivision of a district ³[and includes an additional subdivisional magistrate];
- (10) "year" means a year beginning on the first day of April, or on such other date as may hereafter be fixed for any union board by the ⁴[Provincial Government] by notification; and
- (11) the expressions "non-bailable offence," "cognizable offence," "complaint," "offence," "officer in charge of a police-station" and "police-station," have the same meaning as in section 4 of the Code of Criminal Procedure, 1898, and the expressions "decree," "legal representative" and "moveable property," have the same meaning as in section 2 of the Code of Civil Procedure, 1908.

Ben. Act
III of 1885

Act V of
1898.

Act V of
1908.

¹See foot-note 3 on p. 617, *ante*.

²These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were added by s. 2 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

(Part I.—Chapter II.—Union boards.—Secs. 5-7.)

CHAPTER II.

UNION BOARDS.

Power of
Provincial
Government to
declare local
areas to be
unions.

5. When this Act has come into force in any district or part of a district, the ¹[Provincial Government] may, after consideration of the views of the district board and the local boards, ²[if any], by notification, divide that district or part into as many local areas as may to them seem expedient, and may, by notification, declare every such local area to be a union for the purposes of this Act.

Establishment
and constitution
of union
board.

6. (1) The ¹[Provincial Government] shall, by notification, establish a union board for every union constituted under section 5, and shall fix the number of members of each union board :

Provided that the number of members of a union board shall not be less than six or more than nine.

(2) The members shall be elected within such time and in such manner as may be prescribed by rules and section 101.

(3) Notwithstanding anything contained in sub-section (2), the ¹[Provincial Government] may direct, by an order in writing, for reasons to be stated in such order, that not more than one-third of the total number of members of the union board shall be appointed by the district magistrate :

Provided that no member shall be so appointed unless he is entitled to be elected as a member of the union board under section 7.

(4) If on the date fixed for the election, the electors of any union fail to elect any member or members the vacancy or vacancies shall be filled by another election or by appointment by the district magistrate ; and any person so appointed shall be deemed to be a duly elected member.

Qualifications
of voters and
members of
union board.

7. (1) Every male person of the full age of twenty-one years and having a place of residence within the union,—

(i) who, during the year immediately preceding the election, has paid a sum of not less than ³[eight annas] as cess under the Cess Act, 1880, in respect of lands situated wholly or in part in such union, or

Ben. Act
IX of 1880.

¹See foot-note 3 on p. 617, *ante*.

²These words were inserted by s. 11 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936).

³These words were substituted for the words "one rupee" by s. 3(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

of 1919.]

(Part I.—Chapter II.—Union boards.—Sec. 7.)

- (ii) who, during the year immediately preceding such election, has been assessed at and paid a sum of not less than ¹[six annas] for the purposes of the union rate payable under this Act, or in the case of a first election under this Act, as chaukidari-tax, or
- (iii) who is a member of a joint undivided family, which, during the year immediately preceding the election, has paid a sum of not less than ²[eight annas] as such cess ³[or than six annas as such] rate or tax, ⁴[or
- (iv) who is a graduate or licentiate of any university or has passed the matriculation examination of the Calcutta University or a corresponding standard of the same or any other university, or the high school examination of the board of intermediate and secondary education, Dacca, or the senior or junior madrasah examinations under the old or the reformed scheme, or the sanskrit title examination of the Calcutta Sanskrit association, or the middle english or the middle vernacular examinations or is a registered medical practitioner under the Bengal Medical Act, 1914, or holds a certificate authorising him to practise as a pleader or as a *muktear* or as a revenue agent,]

Ben. Act
VI of 1914.

shall be entitled to vote at an election of members of the union board :

Provided that only one member of a joint undivided family qualified under clause (iii) and nominated by the other qualified members of that family shall be entitled to vote on its behalf at any such election.

(2) Every person who is entitled to vote at an election of members of the union board and is resident within the union, shall be entitled to be a member of the union board if duly elected thereto.

⁵*Explanation*.—A person shall be deemed to be “ resident ” within a union within the meaning of sub-section (2) if he has

¹These words were substituted for the words “ one rupee ” by s. 3(2) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²These words were substituted for the words “ one rupee ” by s. 3(3) (a), *ibid*.

³These words were inserted by s. 3(3) (b), *ibid*.

⁴The word “ or ” and sub-clause (iv) within square brackets were inserted by s. 3(4), *ibid*.

⁵This *Explanation* was substituted for the original *Explanation* by s. 3(5), *ibid*.

[Ben. Act V*(Part I.—Chapter II.—Union boards.—Secs. 8-9A.)*

within the limits of such union a place of residence which he visits from time to time or in which he ordinarily resides for not less than three months a year. No person may be so resident within the limits of more than one union at the same time.

¹(3) When a local board is abolished under section 36A of the Bengal Local Self-Government Act of 1885, sub-section (1) shall, in its application to the area which was under the authority of the local board at the time of its abolition, be subject to the following modifications, namely :—

**Ben. Act
III of
1885.**

- (i) in clause (i) for the words “ the year immediately preceding the election ” the words “ such period of twelve months as may be prescribed by rules under section 101 ” shall be substituted ;
- (ii) in clauses (ii) and (iii) for the words ²[“ ‘ the year immediately preceding such election ’ and the words ‘ the year immediately preceding the election ’ respectively ”] the words “ the period aforesaid ” shall be substituted ; and
- (iii) after the words “ election of members of the union board ” the words “ if his name is included in the electoral roll ” shall be inserted.

**President of
union board.**

8. (1) Every union board shall be presided over by a president, who shall be elected by the members of the union board from among their own number.

(2) If any union board fails to elect a president within the period prescribed by rules under section 101, the district board shall appoint a member of the board to be the president.

**Vice-president
of union
board.**

9. Every union board may elect one of its members to be the vice-president of the board.

**Leave of absence
to president or
vice-president of
union board.**

9A. A union board may grant leave of absence to its president or vice-president for any period not exceeding three months in any one year and may elect one of its members to act as president or vice-president during such absence.

¹Sub-section (3) was added by s. 12 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936). This sub-section is in force in the areas in which s. 12 of Ben. Act XIV of 1936 is in force.

²These words were substituted for the words “ the year immediately preceding the election ” by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³Section 9A was inserted by s. 2 of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

of 1919.]

(Part I.—Chapter II.—Union boards.—Secs. 10-11.)

10. Notwithstanding anything contained in this Act, no person who is not a British subject or a subject of any State in India shall be qualified to vote at an election of, or to be a candidate for election as a member of, a union board nor shall such person be ¹[appointed] to be a member of such board :

Disqualification of certain persons from voting at election of, or being members of, union boards.

Provided that the ²[Provincial Government] may, by notification, exempt from the provisions of this section any person or class of persons who are not British subjects or subjects of any State in India.

³10A. A person shall not be eligible for election or appointment as a member of a union board if such person—

Disqualifications from being a member of a union board.

(a) is an officer or servant of the union board, or

(b) has been ordered to execute a bond in pursuance of proceedings under section 110 of the Code of Criminal Procedure, 1898, or has been convicted by a criminal court of any offence which in the opinion of the ²[Provincial Government] involves moral turpitude and which carries with it a sentence of transportation or imprisonment for a period of more than six months, unless the offence for which he was convicted has been pardoned or five years have expired from the date of the expiration of the period specified in the bond, or of the sentence, as the case may be :

Act V of 1898.

Provided that, on application made by a person disqualified under clause (b), the ²[Provincial Government] may remove the disqualification by an order made in this behalf.

11. The term of office of a member of a union board shall be ⁴[four years] from the date on which the district magistrate shall declare the board to be duly constituted, but shall include any period which may elapse between the expiration of the said ⁴[four years] and the date of the first meeting, at which a quorum is present, of the newly elected and appointed members after the next general election for the union board :

Term of office of members.

⁵Provided that the tenure of office of the former president of the union board shall continue until a new president is elected or appointed under section 8.

¹This word was substituted for the word "nominated" by s. 4 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²See foot-note 3 on p. 617, *ante*.

³Section 10A was inserted by s. 5 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴These words were substituted for the words "three years" by s. 6(1) *ibid*.

⁵This proviso was added by s. 6(2), *ibid*.

(Part I.—Chapter II.—Union boards.—Secs. 12-15.)

Power to
remove
members.

✓ 12. (1) The district board may remove any member of a union board from his office—

- (a) who is convicted of any non-bailable offence ; or
- (b) who refuses to act, or becomes incapable of acting, or is declared to be insolvent ; or
- (c) who has been declared by notification to be disqualified for employment in the public service ; or
- (d) who, without an excuse sufficient in the opinion of the district board, absents himself from six consecutive meetings of the union board ; or
- (e) who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, if two-thirds of the total number of the members of the union board at a meeting recommend his removal.

(2) No person who has been removed from his office under clause (a) or clause (c) of sub-section (1) shall be eligible for re-election or re-appointment.

Filling of
casual
vacancies.

13. When the place of an elected or appointed member of a union board becomes vacant by his removal, resignation or death, a new member shall be elected or appointed in the manner prescribed by rules under section 101, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Provided that no act of the union board, or of its officers, shall be deemed to be invalid by reason only that the number of members of the board at the time of the performance of such act was less than the prescribed number.

Term of office
of president
or vice-
president.

✓ 14. The term of office of a president or vice-president of a union board shall be the residue of his term of office as a member of the union board.

Resignation of
president,
vice-president
or member.

15. (1) A president of a union board may resign during his term of office by notifying in writing his intention to do so to the chairman of the district board and to the union board ; and on such resignation being accepted by the chairman, shall be deemed to have vacated his office.

(2) A vice-president or a member of a union board may resign during his term of office by notifying in writing his intention to do so to the union board, and on such resignation being accepted by the union board, shall be deemed to have vacated his office.

of 1919.]

(Part I.—Chapter II.—Union boards.—Sers. 16-17A.)

16. (1) The district board may remove a president of a union board from his office—

Removal of president or vice-president.

- (i) if he is convicted of any non-bailable offence : or
- (ii) if he refuses to act, or becomes incapable of acting, or is declared insolvent : or
- (iii) if he is guilty of misconduct or persistent negligence in the discharge of his duties as president of the union board or of any disgraceful conduct, and two-thirds of the total number of the members of the union board at a meeting recommend his removal.

(2) A union board may, on the recommendation of two-thirds of the total number of the members of the board at a meeting, remove its vice-president from his office—

- (i) if he is convicted of any non-bailable offence : or
- (ii) if he refuses to act, or becomes incapable of acting, or is declared insolvent : or
- (iii) if he is guilty of misconduct or persistent negligence in the discharge of his duties as vice-president, or of any disgraceful conduct.

17. (1) If a president of a union board dies, resigns or is removed, the union board shall, at a meeting, within a period prescribed by rules under section 101, elect from among its members ¹[another person to be] president.

Filling of casual vacancy in office of president or vice-president.

(2) If any union board fails to elect ¹[another person to be] president within the prescribed period, the district board shall appoint ²[from among members of the union board] ¹[another person to be] president.

(3) If a vice-president of a union board dies, resigns or is removed, the union board may, at a meeting, elect from among its members ¹[another person to be] vice-president.

³17A. ✓ No election of a member of a union board shall be called in question in any court, and no court shall grant an injunction—

Bar to interference by courts in election matters.

- (i) to postpone the election of a member of a union board, or
- (ii) to prohibit a person, declared to have been duly elected under this Act, from taking part in the proceedings of a union board of which he has been elected a member, or
- (iii) to prohibit the members formally elected or appointed for a union board from entering upon their duties.

¹These words were substituted for the words "a new" by s. 7(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²These words were inserted by s. 7(2), *ibid.*

³Section 17A, 17B and 17C were inserted by s. 8, *ibid.*

[Ben. Act V

(Part I.—Chapter II.—Union boards.—Chapter III.—
Dafadars and chaukiars.—Secs. 17B-20.)

Election
disputes.

17B. If any dispute arises as to the election of a member of a union board, the matter shall be referred to the district magistrate who shall decide the same after giving notice to the parties concerned and after taking such evidence as may be produced. The order of the district magistrate shall, within thirty days from the date thereof, be subject to revision by the commissioner whose decision shall be final and shall not be questioned in any court.

Validation of
acts and
proceedings.

17C. No act done or proceeding taken under this Act shall be questioned on the ground merely of—

- (a) the existence of any vacancy in, or any defect in the constitution of, the union board, or
- (b) any defect or irregularity not affecting the merits of the case.

Incorporation
of union
boards.

✓

18. Every union board shall be a body corporate by the name of “the union board of (name of union),” and shall have perpetual succession and a common seal, and shall by the said name sue and be sued, with power to acquire or hold property, both movable and immovable, and, subject to any rules made under section 101, to transfer any such property held by the board and to contract and do all other things necessary for the purposes of this Act.

Works
constructed
by a union
board to vest
in the board.

19. Every road, building or other work constructed by a union board from the union fund shall be vested in the union board by which it has been constructed.

CHAPTER III.

DAFADARS AND CHAUKIDARS.

Appointment
and dismissal
of dafadars
and
chaukidars.

20. (1) The union board shall, when a vacancy exists, nominate a person to be a dafadar or a chaukidar under this Act, and the ²[Provincial Government] shall, if satisfied with such nomination, appoint such nominee :

Provided that, if the union board fails within a reasonable time to nominate a person to be a dafadar or a chaukidar, or, if the ²[Provincial Government] is not satisfied with such nomination, the ²[Provincial Government] shall appoint any person, whom ³[it] thinks fit, to be a dafadar or a chaukidar.

✓ (2) The district magistrate, or the union board, with the sanction of the district magistrate, may dismiss any dafadar or chaukidar.

See foot-note 3 on p. 625, *ante*.

²These words were substituted for the words “district magistrate” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³This word was substituted for the word “he” by paragraph 5(2), *ibid*.

of 1919.]

{Part I.—Chapter III.—Dafadars and Chaukidars.—
Secs. 21-23.)

21. (1) The number of dafadars and chaukidars to be employed in a union, the salary to be paid to them and the nature and cost of their equipment shall be determined from time to time by the district magistrate after consideration of the views of the union board.

Numbers and salaries of dafadars and chaukidars.

(2) The salaries and the cost of equipment of dafadars and chaukidars shall be paid by the union board, and the dafadars and chaukidars shall receive their salaries and equipment at such times and in such manner as may be prescribed by rules under section 101.

✓ 22. Any dafadar or chaukidar who is guilty of any wilful misconduct in his office, or neglect of his duty, such misconduct or neglect not being of so grave a character as in the opinion of the district magistrate or the union board, as the case may be, to require his dismissal, shall be liable to be punished by the district magistrate with fine not exceeding the amount of one month's salary or by the union board with fine not exceeding one-quarter of a month's salary.

Power to fine dafadars and chaukidars.

23. (1) Every chaukidar shall exercise the following powers and perform the following duties :—

Powers and duties of dafadars and chaukidars.

(i) he shall give immediate information to the officer in charge of the police-station within the limits of which the union is situated and to the president of the union board, of every unnatural, suspicious or sudden death which may occur, and of any offence specified in schedule II which may be committed within the union, and he shall keep the police and the president of the union board informed of all disputes which are likely to lead to a riot of serious affray ;

(ii) he may, without an order from a magistrate and without a warrant, arrest—

(a) any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned ;

(b) any person having in his possession, without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking ;

(c) any person who has been proclaimed as an offender either under the Code of Criminal Procedure, 1898, or by order of the ¹[Provincial Government];

Act V of
1898.

¹See foot-note 3 on p. 617, *ante*.

(Part I.—Chapter III.—*Dafadars and chaukidars.*—
Sec. 23.)

Act V of
1898.

- (d) any person in whose possession anything is found which may reasonably be suspected to be stolen property, or who may reasonably be suspected of having committed an offence with reference to such thing ;
- (e) any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ;
- ¹(f) any person reasonably suspected of being a deserter from His Majesty's Army, Navy or Air Force ; and
- (g) any released convict committing a breach of any rule made under section 565, sub-section (3), of the Code of Criminal Procedure, 1898 ;
- (iii) he shall, to the best of his ability, prevent, and he may interpose for the purpose of preventing, the commission of any offence specified in Schedule II ;
- (iv) he shall assist private persons in making such arrests as they may lawfully make, and he shall report such arrests without delay to the officer in charge of the aforesaid police-station ;
- (v) he shall observe, and, from time to time, report to the said officer the movements of all bad characters within the union ;
- (vi) he shall report to the said officer the arrival of suspicious characters in the neighbourhood ;
- (vii) he shall report in such manner as may be prescribed by the district magistrate the births and deaths which have occurred within the union ;
- ²(viii) he shall give immediate information to the union board of the outbreak of any epidemic disease among men or cattle ;
- (viii) he shall supply any local information which the district magistrate or any police officer may require ;
- (ix) he shall obey the orders of the union board in regard to keeping watch within the union and in regard to other matters connected with his duties as chaukidar ;
- (x) he shall give immediate information to the union board of any offence under sub-section (4) of section 30 and of any encroachment on, or obstruction to, any road or water-way within the union and of any damage to any property under the control of the union board ;

¹Sub-clause (f) was substituted for the original sub-clause (f) by s. 9(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act. VIII of 1935).

²Clause (viii) was inserted by s. 9(2), *ibid.*

of 1919.]

(Part I.—Chapter III.—Dafadars and chaukidars.—Chapter IV.—Powers and duties of union boards.—Secs. 24-26.)

(xi) he shall assist the person collecting the union rate in making such collection ;

(xii) he shall serve such processes upon persons resident within the union as may be prescribed by rules under section 101 ; and

(xiii) he shall carry out such other duties as may be entrusted to him from time to time in accordance with this Act or any rules made hereunder.

(2) Every dafadar shall exercise all the powers conferred on a chaukidar under sub-section (1) and shall perform such duties as may be imposed upon him by rules made under section 101.

24. Whenever a dafadar or chaukidar arrests any person under section 23, he shall forthwith take the person so arrested to the police-station within the limits of which the union is situated :

Procedure on arrest by dafadar or chaukidar.

Provided that, if the arrest is made at night, such person shall be so taken, as soon as convenient, on the following morning.

25. All fines realized from a dafadar or chaukidar under section 22 of this Act shall be credited to a district chaukidari reward fund, the control over which shall rest with the district magistrate.

Fines to be credited to district chaukidari reward fund.

CHAPTER IV.

POWERS AND DUTIES OF UNION BOARDS.

26. Every union board—

Duties of union boards.

- (1) (a) shall take such action as is necessary to secure the due performance by the dafadars and chaukidars of the union of the duties imposed on them under this Act, and shall exercise a general control over them ;
- (b) shall provide, as far as possible, for the sanitation and conservancy of the union and for the prevention of public nuisances therein ;
- (c) shall make special arrangements for the sanitation and conservancy of fairs and melas held within the union ;
- (d) shall have control of all drains and other conservancy works within the union which are not under the control of any other authority ;
- (e) shall execute all works that are necessary for the preservation of public health and for improving the sanitation, conservancy or drainage of the union ;

(Part I.—Chapter IV.—Powers and duties of union boards.—
Sec. 26.)

(f) shall supply any local information which the district magistrate or the district board or local board may require ; and

(g) shall perform all such other acts as may be necessary to carry out the purposes of this Act ;

(2) shall perform such functions as may be transferred to it by notification under section 31 of the Cattle-tresspass Act, 1871 ; I of 1871.

(3) if required to do so by the district magistrate, shall provide for the registration of births and deaths within the union under the provisions of the Bengal Births and Deaths Registration Act, 1873 ; Ben. Act IV of 1873.

(4) shall cause such processes as may be received by the union board for service to be duly served by a dafadar or chaukidar in accordance with rules under section 101 ; ^{1*}

²(4a) may undertake and carry out any work necessary for the prevention and scientific treatment of cattle diseases or for the improvement of the breed and health of cattle, and may employ the staff requisite for such purposes ; ^{3*}

³(4b) may undertake and carry out measures for the improvement and development of cottage industries and may employ the staff requisite for such purpose ;

³(4c) may undertake and carry out measures for the furtherance of public health within the union and may, subject to any rules made under section 101, employ the staff requisite for such purpose, and may, for such purpose, join with any other union board or boards in the same district in the manner provided in section 32AA ; and

(5) may undertake and carry out any other local work of public utility likely to promote the health, comfort or convenience of the public, and not otherwise provided for in this Act ⁴[and may employ the staff requisite for such purposes.]

¹The word "and" was omitted by s. 3(a) of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

²Clause (4a) was inserted by s. 3(a), *ibid.*

³The word "and" was omitted and clauses (4b) and (4c) were inserted by s. 10 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴These words were inserted by s. 3(b) of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

of 1919.]

(Part I.—Chapter IV.—Powers and duties of union boards.—
Secs. 26A—27.)

126A. The union board shall immediately on receipt of information of the outbreak of any epidemic disease among men or cattle send simultaneous reports of such information to the district health officer and to the local sanitary inspector of the district board or to the local veterinary assistant surgeon, as the case may be.

Reports of epidemic diseases among men or cattle.

126B. The union board may, with the approval of the chairman of the district board and subject to any rules made under section 101, grant rewards to medical practitioners or other persons for giving prompt information to the union board of the outbreak of any epidemic disease among men or cattle.

Power to union boards to grant rewards for information of the outbreak of any epidemic diseases among men or cattle.

27. (1) If it appears necessary to improve the sanitary condition of the union or any part thereof—

Powers of union board as to sanitation, conservancy and drainage.

(a) the union board may, or, under the orders of the district board, shall—

- (i) cause huts or privies to be removed either wholly or in part ;
- (ii) cause private drains to be constructed, altered or removed ;
- (iii) cause public drains to be constructed, altered or removed ;
- (iv) cause—

any well, pool, ditch, tank, pit or pond, or
any place containing or used for the collection of any drainage, filth or stagnant water, which appears to be injurious to health or offensive to the neighbourhood or in any other respects a nuisance, to be filled up, cleansed or deepened or the water to be drained off or removed therefrom, or such other action to be taken therewith as may be deemed necessary;

- (v) cause any land, which by reason of thick vegetation, undergrowth or jungle appears to be in a state injurious to health or offensive to the neighbourhood or to form an impediment to efficient ventilation, to be cleared of such vegetation, undergrowth or jungle ;

¹Sections 26A and 26B were inserted by s. 11 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

*(Part I.—Chapter IV.—Powers and duties of union boards.—
Sec. 27.)*

(vi) cause burning-ghats and burial grounds to be established ; and

(vii) cause such other improvements to be made as are necessary to improve the sanitary condition of such union or part ; and

(b) the union board may, by written notice, require, within a reasonable period to be specified therein,—

(i) the owner or occupier of any hut, or the owner of any privy to remove such hut or privy either wholly or in part ; or

(ii) the owner or occupier of any building to construct private drains therefor or to alter or remove private drains thereof ; or

(iii) the owner or occupier of any land or building to which any such well, pool, ditch, tank, pit, pond or place as is referred to in clause (a) (iv) pertains, or of any such land as is referred to in clause (a) (v), to do anything which the union board is itself empowered to do under either of those clauses.

✓ (2) If any work required by any such notice, is not executed within the period specified in the notice, the union board may itself cause such work to be carried out, and may recover the cost of such work or part thereof from the owner or occupier referred to in clause (b) of sub-section (1), as if it were an arrear of rate imposed under section 37.

(3) An appeal shall lie against every notice issued under clause (b) of sub-section (1), to the chairman of the district board, who, after giving the owner and occupier full opportunity of adducing evidence and of being heard, may make an order cancelling, modifying or confirming the said notice. Such appeal shall be filed within fifteen days from the date of service of the notice.

¹(4) Without prejudice to the provisions of sub-section (2), if any person fails without sufficient reason to comply with a notice issued under clause (b) of sub-section (1) or, in the case of an appeal under sub-section (3), with an order modifying or confirming such a notice within a reasonable period to be specified in such notice or order, as the case may be, he shall be punished with a fine which may extend to twenty-five rupees and to a further fine which may extend to five rupees for each day after conviction during which he so fails.

¹Sub-section (4) was added by s. 12 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

of 1919.]

(Part I.—Chapter IV.—Powers and duties of union boards.—
Secs. 28, 29.)

28. (1) A union board may employ an establishment for the cleansing of the union or any part thereof.

Power of
union board
as to cleansing
of unions.

(2) Where no such establishment is employed by a union board, the board may, by written notice, require owners or occupiers of land in the union to cleanse such land to the satisfaction of the board within a reasonable period, to be specified in the notice.

(3) If any person on whom notice has been served under sub-section (2) fails to comply with the requisition contained in the notice, the union board shall, unless reasonable cause to the contrary is shown—

(a) cause the land to be cleansed, and

(b) recover from such person such portion of the cost of such cleansing as the union board may direct, as if it were an arrear of rate imposed under section 37.

(4) An appeal shall lie against every notice issued under sub-section (2) to the Chairman of the local board,¹ [or, where there is no local board, to the Chairman of the district board,] who, after giving the owner and occupier full opportunity of adducing evidence and of being heard, may make an order cancelling, modifying or confirming the said notice. Such appeal shall be filed within fifteen days from the date of service of the notice.

²(5) Without prejudice to the provisions of sub-section (3), if any person fails without sufficient reason to comply with a notice issued under sub-section (2), or, in the case of an appeal under sub-section (4), with an order modifying or confirming such a notice within a reasonable period to be specified in such notice or order, as the case may be, he shall be punished with a fine which may extend to twenty-five rupees and to a further fine which may extend to five rupees for each day after conviction during which he so fails.

29. (1) The union board may, subject to rules made under section 101, by written order,—

(a) direct, in accordance with a scheme approved by the local board³ [or, where there is no local board, by the district board,] for any part of the union, that no building, wall or platform shall be erected, re-erected or added to in advance of an alignment to be prescribed by the union board and demarcated on the ground ; and

Power of
union board
to control
erection of
buildings, etc.

¹These words were inserted by s. 13 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936). This amendment is in force in the areas in which s. 13 of the Ben. Act XIV of 1936 is in force.

²Sub-section (5) was added by s. 13 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

³These words were inserted by s. 14 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936). It is in force in the areas in which s. 14 of Ben. Act XIV of 1936 is in force.

*(Part I.—Chapter IV.—Powers and duties of union boards.—
Sec. 30.)*

- (b) prescribe, in accordance with the said scheme, the space which shall intervene between any new or enlarged building and the building next adjacent and between any new or enlarged building and any road in the union.

(2) Where any building, wall or platform has been placed in contravention of an order passed by the union board under sub-section (1), the union board may apply to the district magistrate, and such magistrate may make an order—

- (i) directing either that the work done, or so much of the same as has been executed in contravention of the order passed under sub-section (1), be demolished by the owner of the building, wall or platform, or that it be altered by him to the satisfaction of the union board, within such time as may be fixed by the district magistrate ;
or
(ii) directing that the work done, or so much of the same as has been executed in contravention of the order passed under sub-section (1), be demolished or altered by the union board at the expense of the owner within such time as may be fixed by the district magistrate :

Provided that the magistrate shall not make any such order without giving the owner full opportunity of adducing evidence and of being heard.

(3) If any person to whom a direction to demolish or alter any building, wall or platform, is given under clause (i) of sub-section (2), fails to obey the same, he shall be liable to a fine which may extend, in the case of a masonry building, wall or platform, to one hundred rupees, and, in the case of any other building, wall or platform, to twenty-rupees, and to a further fine which may extend, in the case of a masonry building, wall or platform, to ten rupees and in the case of any other building, wall or platform, to two rupees for each day during which, after the period fixed by the district magistrate, he fails to obey the direction to demolish or alter the building, wall or platform.

30. (1) A union board may provide the union or any part thereof, with a supply of water, proper and sufficient, for public and private purposes ; and, for such purposes, may, or, under the orders of the district board, shall,—

- (a) construct, repair and maintain tanks or wells, and clear out streams or water-courses ;

**Power of
union board
to provide for
proper water-
supply.**

of 1919.]

(Part I.—Chapter IV.—Powers and duties of union boards.—
Sec. 31.)

- (b) with the sanction of the ¹[Provincial Government], and subject to such rules as may be made under section 101, construct, repair and maintain water-works ;
- (c) purchase or acquire by lease or gift any tank, well, stream or water-course, or any right to take or convey water within or without the union ;
- (d) with the consent of the owner thereof, utilize, cleanse or repair any tank, well, stream, or water-course within the union, or provide facilities for obtaining water therefrom ;
- (e) contract with any person for a supply of water ;
or
- (f) do any other acts necessary for carrying out the purposes of this section.

(2) The union board may, by order published at such places as it may think fit, set apart for the supply to the public of water for drinking or culinary purposes any tank, well, stream or water-course in respect of which action has been taken under clause (a), (c) or (d) of sub-section (1), subject to any rights which the owner referred to in clause (d) of that sub-section may retain with the consent of the board.

(3) The union board may, by order published at such places as it may think fit, prohibit all bathing, washing of clothes and animals, or other acts calculated to pollute the water of any tank, well, stream or water-course set apart for drinking or culinary purposes under sub-section (2).

(4) Any person who disobeys an order issued under sub-section (3), shall be punished with fine which may extend to twenty-five rupees.

31. The union board shall have control of all roads, bridges and water-ways within the union, not being private property and not being under the control of the ¹[Provincial Government] or the district board or local board, and may do all things necessary for the maintenance and repair thereof, and may—

Powers of union board as to roads, bridges and water-ways.

- (a) lay out and make new roads ;
- (b) construct new bridges ;
- (c) divert, discontinue or close any road or bridge ;
- (d) widen, open, enlarge or otherwise improve any road or bridge ;

¹See foot-note 3 on p. 617, *ante*.

[Ben. Act V

(Part I.—Chapter IV.—Powers and duties of union boards.—
Secs. 31A, 32.)

- (e) deepen or otherwise improve water-ways ;^{1*}
- (f) provide for the lighting of any road or public place within the union ; ¹[and]
- ²(g) with the sanction of the Commissioner, undertake small irrigation projects.

Stipends.

³31A. The union board may grant a stipend to any student having a place of residence within the union who is pursuing his studies in any—

- (i) middle English school,
- (ii) high English school, or
- (iii) other secondary school,

which holds agricultural classes, and who attends such classes or in any technical or agricultural school.

Establishment of primary school and dispensaries.

⁴32. ⁶[(1)]. The union board may, subject to any rules made under section 101, ⁷[make grants to primary schools], establish primary schools or dispensaries, or assume charge of existing primary schools or dispensaries, and shall repair, maintain and manage any primary school or dispensary under its charge.

⁵32. ⁶[(1)]. The union board may, subject to any rules made under section 101, establish ⁸ * * * * * dispensaries, or assume charge of existing ⁸ * * * * * dispensaries, and shall repair, maintain and manage any ⁸ * * * * * dispensary under its charge.

Establishment of dispensaries.

¹The word "and" was transposed at the end of clause (f) by s. 2(1) of the Bengal Village Self-Government (Amendment) Act, 1932 (Ben. Act IX of 1932).

²Clause (g) was inserted by s. 2(2), *ibid*.

³Section 31A was inserted by s. 14 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴This sub-section (1) of s. 32 is in force in this form in areas in which the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930), is not in force.

⁵This sub-section (1) of s. 32 is in force in this form in areas in which the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930), is in force.

⁶Section 32 was renumbered as sub-section (1) of section 32 by s. 4 of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

⁷These words were inserted by s. 15 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁸The words "primary school or" and "primary schools or" were omitted by s. 67 of the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930).

of 1919.]

(Part I.—Chapter IV.—Powers and duties of union boards.—
Secs, 32A, 32AA.)

¹(2) The union board may, subject to any rules made under section 101, make grants to—

- (a) any dispensary under public or private management, or
- (b) any library or reading room maintained for the public benefit and open to the public, and on the managing authority of which the union board is represented.

Ben. Act
VII of
1930.

32A. ³[(1)] Subject to the provisions of the Bengal (Rural) Primary Education Act, 1930, and to the control of the district school board constituted under that Act, the union board may establish primary schools or assume charge of existing primary schools and shall repair, maintain and manage any primary school under its charge.

Establishment
and management
of primary
schools.

³(2) The union board may, subject to any rules made under section 101, and to the control of the district school board constituted under the Bengal (Rural) Primary Education Act, 1930, make grants to primary schools which are recognised under section 54 of the said Act.

32AA. A union board may, with the previous sanction of the district board and subject to any rules made under section 101, join with any other union board or boards in the same district in constituting out of their respective bodies a

Joint
committees.

¹Sub-section (2) was substituted for sub-section (2) which was added by the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931), by s. 3 of the Bengal Village Self-Government (Amendment) Act, 1932 (Ben. Act IX of 1932).

²Section 32A was inserted by s. 67 of the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930), and is in force in areas where the said Act is in force.

³Section 32A was renumbered as sub-section (1) of section 32A and sub-section (2) was added by s. 16 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴Section 32AA was inserted by s. 5 of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

*(Part I.—Chapter IV.—Powers and duties of union boards.—
Secs. 33, 34.)*

joint committee for any purpose in which they are jointly interested and in delegating to any such joint committee any power which might be exercised by either or any of the boards concerned.

Transfer of certain duties from the district or local board to a union board.

✓ 33. The district board or local board may, from time to time, with the consent of the union board, make over to a union board, subject to such conditions as they may deem necessary, the management of any institution or the execution of any work or duty within the area over which the union board has control; and thereupon such union board shall do all things necessary for the management of the institution or the execution of the work or duty:

Provided that the funds necessary for the management of the institution and the execution of the work or duty shall be placed by the district board or local board at the disposal of the union board.

Prohibition of certain offensive and dangerous trades without licenses.

134. (1) No place within a union shall be used without a license granted by the union board (which shall be renewable annually) for any trade or business declared by the ²[Provincial Government] by notification to be offensive or dangerous.

(2) In every notification under sub-section (1) the ²[Provincial Government] shall specify the maximum amount of fees which may be levied by a union board for a license in respect of any trade or business declared in such notification to be offensive or dangerous.

(3) Subject to the approval of the district magistrate, the union board may levy in respect of any license granted by it under sub-section (1) a fee not exceeding the maximum amount specified under sub-section (2), and may impose such conditions in respect of such license as may be considered necessary.

(4) Whoever, in any union, uses without a license any place for the purpose of any trade or business declared under sub-section (1) to be offensive or dangerous, or fails to comply with any condition subject to which a license is granted under that sub-section, shall be punished with a fine which may extend to twenty-five rupees, and to a further fine which may extend to five rupees for each day after conviction during which he continues so to offend.

¹Section 34 was substituted for the original section 34 by s. 17 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²See foot-note 3 on p. 617, *ante*.

of 1919.]

(Part I.—Chapter IV.—Powers and duties of union boards.—
Secs. 35, 36.)

(5) The union board, upon the conviction of any person for failing to comply with any condition of a license granted under sub-section (1), may suspend or cancel such license.

(6) An appeal shall lie to the district magistrate against every order by a union board refusing, suspending or cancelling a license, or imposing conditions in respect of a license within thirty days from the date of such order, and the decision of the district magistrate thereon shall be final.

35. The union board, or any member, officer or servant thereof, may enter into or upon any building or land, with or without assistants or workmen, in order to make any inspection or execute any work for the purposes of, or in pursuance of ¹* * * section ²[26.] 27, 28, 29, 30, 31, 32, 33 or 34 : Power of entry.

Provided as follows :—

- (a) no such entry shall be made between sunset and sunrise ;
- (b) no dwelling-house shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours' previous written notice signed by the president or vice-president of the intention to make such entry ; and
- (c) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

36. ³[Subject to the approval] of the local board, ⁴[or where there is no local board, of the district board,] a union board may appoint such staff of officers and servants as it may consider necessary to carry out its duties under this Act, and may fix the salaries to be paid to such staff : Appointment of establishment for union board.

⁵Provided that no member of a union board shall be appointed to be an officer or servant of such union board.

¹The words, brackets and figures "clause (1) of section 26 or" were omitted by s. 18(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²The figure "26" was inserted by s. 18 (2), *ibid.*

³These words were substituted for the words "With the approval" by s. 19, *ibid.*

⁴These words were inserted by s. 15 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936). This amendment is in force in the areas in which s. 15 of Ben. Act XIV of 1936 is in force.

⁵This proviso was added by s. 19 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

(Part I.—Chapter V.—Union fund.—Secs. 37-39.)

CHAPTER V.

UNION FUND.

Imposition of
union rate.

37. The union board shall impose yearly on ¹[persons who are owners or occupiers or owners and occupiers] of buildings, within the union, a rate amounting to—

- (a) the sum required, after deduction of the contribution, if any, made by the ²[Provincial Government] in this behalf, for the salaries and equipment of the dafadars and chaukidars and the salaries of the establishment of the union board, and
- (b) the sum estimated to be required to meet the expenses of the board in carrying out any of the other purposes of this Act, if such estimate has been approved by ³[more than half] the total number of the members of the board at a meeting specially convened for the purpose,

together with ten *per cent.* above such sums to meet the expenses of collections and the losses due to non-realization of the rate from defaulters.

Nature of
assessment.

38. (1) The rate to be imposed by a union board under section 37 shall be an assessment according to the ⁴[the circumstances within the union and property within the union, if any,] of the persons liable to the same :

1919

Provided that the amount assessed upon any person in any one year shall not be more than eighty-four rupees. 84/-

(2) Any person who, in the opinion of the union board, is too poor to pay half-an-anna a month, shall be altogether exempted from payment of any rate under this Act. -/6/-

Procedure of
assessment
and revision
thereof by
the union
board.

39. The assessment for the imposition of the rate under section 37 shall be made in accordance with rules prescribed under section 101, and any person dissatisfied with the amount at which he has been assessed may, within such time as may be specified in those rules, apply to the union board, either orally or in writing, for a revision of the assessment, and the union board may amend the assessment or confirm the same.

¹These words were substituted for the words "the owners or occupiers" by s. 20(1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²See foot-note 3 on p. 617, *ante*.

³The words were substituted for the words "not less than two-thirds of" by s. 20(2) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴These words were substituted for the words "the circumstances and the property within the union" by s. 21, *ibid*.

of 1919.]

(Part I.—Chapter V.—Union fund.—Secs.—40-43.)

40. The district magistrate may, at any time, call for the papers containing the assessment of the union rate imposed under section 37, and may, after such inquiry as may be necessary, pass such orders thereon as he may think proper.

Power of district magistrate to revise assessment.

41. The payment of the rate shall be made in accordance with rules prescribed under section 101, and, in case of default of any such payment, the president of the union board, or, if so directed by him, the vice-president, shall cause the chaukidar or any other person authorized in writing by the president or the vice-president to levy, by the distraint and sale of a sufficient portion of the movable property of the defaulter, the amount of his arrear, together with a sum equal to half the amount of such arrear, by way of penalty.

Arrear to be recovered by distraint and sale of movable property of defaulter.

42. (1) The distraint and sale of such movable property shall be conducted in accordance with rules prescribed under section 101.

What property may be distrained and sold for arrears.

(2) All goods and chattels, except plough-cattle and tools and implements of trade and agriculture, found in or upon any building or land occupied by any defaulter, shall be deemed to be his property, and shall be liable to be distrained and sold for the recovery of the arrear, and also the penalty due under section 41.

(3) If any of the goods and chattels liable to be distrained belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner of such goods and chattels for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

43. (1) If the union board is unable to recover under section 41 the amount due for the arrear of rate and the penalty, the district magistrate may, on the application of the union board, issue his warrant to any officer of his court for the distress and sale of a sufficient portion of the movable property of the defaulter within any other part of the jurisdiction of the magistrate, or may issue a warrant for the distress and sale of a sufficient portion of the movable property of the defaulter within the jurisdiction of any other magistrate exercising jurisdiction within Bengal who shall endorse the warrant so issued and cause it to be executed by an officer of his court.

Distraint and sale of property beyond the limits of the union.

(2) The provisions of section 42 shall apply to the distress and sale under this section.

¹Section 43 was substituted for the original section 43 by s. 22 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

(Part I.—Chapter V.—Union fund.—Secs.—44-46.)

(3) In case the amount of penalty realised does not cover the cost of the distress and sale the district magistrate shall realise from the defaulter such cost in addition to the amount due for arrear of rate and the penalty.

(4) On execution of a warrant issued under this section the amount realised shall be remitted to the union board.

Irregularities
not to avoid
distraint.

44. No distress levied by virtue of this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser on account of any defect, irregularity or want of form in any assessment, notice, summons, power, writing, inventory or other proceeding relating thereto, nor shall such person be deemed a trespasser from the commencement on account of any irregularity afterwards committed by him, but all persons aggrieved by such irregularity may recover full satisfaction for any special damage sustained by them in any court of competent jurisdiction, subject to the provisions of section 64.

Disposal of
surplus
sale-proceeds.

¹44A. The surplus sale-proceeds (if any) under sections 41 and 43 may be paid on demand to any person who establishes his right thereto to the satisfaction of the union board or in a court of competent jurisdiction.

Grants-in-aid
from district
fund.

45. The district board may make to the union board such grants-in-aid from the district fund, as they may think fit, to enable the union board to carry out any of the purposes of this Act, and may attach to such grants any conditions that may appear to the district board to be desirable :

Provided always that in the case of any union board which has imposed a rate under clause (b) of section 37 the district board shall make a suitable grant-in-aid.

Union fund.

46. ²(1) All sums realised under sections 41 and 42 and all other receipts of the Union Board, including any donation or contribution from a private person, but not including any sum realised as a fine or as a fee, shall be paid into a fund to be called "The Union Fund" the accounts of which shall be kept in accordance with rules under section 101.

²(1a) All sums realised as fines or fees under this Act and all sums received by the Union Bench or Union Court shall form part of the revenues of the Province.

(2) Except as is otherwise provided in this Act, the expenses incurred by the union board, the union bench, or

¹Section 44A was inserted by s. 23 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²Sub-sections (1) and (1a) were substituted for the original sub-section (1) by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1919.]

(Part I.—Chapter VI.—General provisions relating to union boards.—Secs. 47-49.)

the union court in carrying out the purposes of this Act, including such reasonable compensation as the board may think fit to pay under section 61, shall be paid out of the union fund :

Provided that the salaries and cost of equipment of dafadars and chaukidars and the salaries of the establishment of the union board shall be the first charge upon the union fund :

Provided also that all sums made over to a union board for any specific purpose shall be applied solely to that purpose.

CHAPTER VI.

GENERAL PROVISIONS RELATING TO UNION BOARDS.

Delegation.

47. The district magistrate may, by an order in writing, delegate the powers or duties specified in the first column of Schedule III to the officers mentioned in the second column thereof.

Delegation of district magistrate's powers and duties.

Disputes.

48. (1) If a dispute arises between two or more union boards, which are subordinate to the same local board, the matter shall be referred to such local board ; and the decision of the local board thereon shall be final and binding.

Disputes between union boards.

¹(2) If a dispute arises between two or more union boards, which are within the same district but which are subordinate to different local boards, the matters shall be referred to the district board ; and the decision of such district board thereon shall be final and binding.

²(2) If a dispute arises in any case to which the provisions of sub-section (1) are not applicable between two or more union boards which are within the same district the matter shall be referred to the district board ; and the decision of the district board thereon shall be final and binding.

49. If a dispute arises between a municipal authority and a union board within the same district, the matter shall be referred to the district magistrate ; and the decision of the district magistrate thereon shall be final and binding :

Disputes between a municipal authority and a union board.

Provided that, if the district magistrate is a member of the municipal authority concerned, his functions under this section shall be discharged by the commissioner.

¹This sub-section (2) and s. 50 in this form are in force in the areas in which ss. 16 and 17 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936) are not in force.

²This sub-section (2) and s. 50 in this form are in force in the areas in which ss. 16 and 17 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936), are in force. Sub-section (2) and s. 50 were substituted for the original sub-section (2) and s. 50 by ss. 16 and 17, *ibid.*

(*Part I.—Chapter VI.—General provisions relating to union boards.—Secs. 50-53.*)

Control.

Local board to superintend the administration of union boards.

50. Subject to the control of the district board, a local board shall superintend the administration of union boards within the area under the authority of the local board, except in matters relating to dafadars and chaukidars.

50. A district board shall superintend the administration of union boards within the area under the authority of the district board, except in matters relating to dafadars and chaukidars :

District Board or local board to superintend the administration of union board.

Provided that, where there is a local board, the local board shall, subject to the control of the district board, exercise such superintendence over the administration of union boards within the area under the authority of the local board!

Supervision of union boards by commissioners and other officers.

✓ **51.** (1) It shall be the duty of all commissioners, district magistrates, subdivisional magistrates, circle officers and chairmen of district boards and local boards to see that the proceedings of union boards are in conformity with law and with the rules in force thereunder.

(2) The commissioner may, by order in writing, annul any proceeding which he considers not to be in conformity with law and with the said rules, and may do all things necessary to secure such conformity.

Inspection of union board record.

52. Every union board shall at all times permit the commissioner, the district magistrate, the chairman of the district board or local board, or any other person authorized by them or by the ³[Provincial Government], to have access to all its books, proceedings and records.

Inspection of work or property of union board.

✓ **53.** The Commissioner, the district magistrate, the chairman of the district board and local board, and any other person authorized by them or by the ³[Provincial Government], shall have power at all times to enter on and inspect, or cause to be entered on and inspected any immovable property occupied by, or any work in progress under the orders of, or any institution controlled by, a union board.

¹See footnote 1 on p. 643, *ante*.

²See footnote 2 on p. 643, *ante*.

³See foot-note 3 on p. 617, *ante*.

of 1919.]

(Part I.—Chapter VI.—General provisions relating to union boards.—Secs. 54-55A.)

54. (1) If at any time the district magistrate is satisfied that the whole or any portion of the salaries, or of the cost of equipment, of dafadars and chaukidars, or of the salaries of the establishment of a union board, is in arrear, the district magistrate may appoint such person or persons as he may consider necessary to realize any sum so due, together with the incidental cost (if any) of collecting it.

Special provision in case of non-payment of chaukidars and staff.

(2) Any person so appointed may realize any such sum and cost either from the balance at the credit of the union fund or by the collection of any outstanding portion of the union rate as assessed by the union board, or, if the amount so collected is insufficient, by the imposition and collection of a supplementary assessment.

(3) A person so appointed shall exercise all the powers vested in the union board for the assessment and collection of the union rate.

(4) The amount collected under sub-section (2) shall be disbursed in the payment of the sum and the cost referred to in sub-section (1) and the balance (if any) shall be paid to the union fund.

55. (1) When a union board makes default in performing any duty imposed on it by the district board under section 27 or section 30, the district board may fix a period for the performance of that duty.

Power to provide for performance of duties under section 27 or 30 in case of default by a union board.

(2) If any such duty is not performed within the period fixed under sub-section (1), the district board may appoint such person or persons, as they consider necessary to perform it, and may direct that the expense of performing it, together with a reasonable remuneration to such person or persons, shall be forthwith paid by the union board.

✓ 55A. If the commissioner, after consideration of the views of the district magistrate and the district board, is of opinion that a union board is not competent to perform, or persistently makes default in the performance of, the duties imposed upon it by or under this or any other Act, or exceeds or abuses its powers, the commissioner may, with the approval of the ²[Provincial Government], by an order in writing specifying the reasons for so doing, direct that a fresh general election shall be held, and fresh appointments shall be made immediately of persons to be members of the union board; and from the date on which the district magistrate shall declare the board to be duly reconstituted the former members of the board shall, unless they are re-elected or re-appointed, vacate their offices.

Power to dissolve a union board.

¹Section 55A was inserted by s. 25 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²See foot-note 3 on p. 617, *ante*.

(Part I.—Chapter VI.—General provisions relating to union boards.—Secs. 56-58.)

Power to remove the president or supersede a union board.

✓ 56. (1) If the commissioner, after consideration of the views of the district magistrate and the district board, is of opinion that a union board is not competent to perform, or persistently makes default in the performance of, the duties imposed upon it by, or under, this or any other Act, or exceeds or abuses its powers, the commissioner may, ¹[with the approval of the Provincial Government²] by an order in writing specifying the reasons for so doing, either—

- (a) remove the president of the union board from his office both as president and as member ; or
- (b) supersede the board for a period to be specified in the order.

(2) Every such order shall be published locally in such manner as may be prescribed by rules under section 101.

Consequences of supersession.

57. (1) When a union board is superseded under section 56, sub-section (1) the following consequences shall ensue :—

- (a) all members constituting the board shall, as from the date of the order, vacate their offices as such members ;
- (b) all powers and duties of the union board shall, during the period of supersession, be exercised and performed by such local authority, person or persons, and in such manner as the commissioner may direct ; and
- (c) all property vested in the union board shall, during that period, vest in such local authority, person or persons, and in such manner, as the commissioner may direct.

(2) On the expiration of the period of supersession the union board shall be re-established by re-election or re-appointment in the manner provided in section 6.

Power to suspend action of union board.

58. The district magistrate, or the district board, may, by an order in writing suspend the execution of any order or resolution of a union board within the jurisdiction of such magistrate or district board, or the doing of any act which is about to be done, or is being done, by such union board, if in the opinion of the district magistrate or the district board the execution of the resolution or order, or the doing of the act, is likely to cause injury, or annoyance to the public or to any class or body of persons, or to lead to a breach of the peace.

¹These words were inserted by s. 4 of the Bengal Village Self-Government (Amendment) Act, 1932 (Ben. Act IX of 1932).

²The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1919.]

(Part I.—Chapter VI.—General provisions relating to union boards.—Secs. 59-62.)

59. When the district magistrate or the district board makes any order under section 58, the magistrate or board, as the case may be, shall forthwith submit to the commissioner a copy of the order, with a statement of the reasons for making it and with any explanation which the union board concerned may wish to offer, and the commissioner may thereupon confirm, modify or rescind the order.

Order of magistrate or district board under section 58 to be reported to the commissioner.

Miscellaneous.

60. (1) If any member of a union board otherwise than with the sanction of the local board, or if any officer or servant maintained by or employed under the union board, participates or agrees to participate in the profits of any work done by the union board or is concerned or participates in the profits of any contract entered into with the board, he shall be liable on conviction before a criminal court to a fine which may extend to five hundred rupees :

Penalty on member, officer or servant being interested in a contract, made with a union board.

Provided that the penalty herein prescribed shall not be deemed to apply by reason only of a person -

- (a) having a share in any joint-stock company which shall contract with or be employed by, or on behalf of, the union board ; or
- (b) having a share or interest in any newspaper in which any advertisement relating to the affairs of the union board may be inserted : or
- (c) holding a debenture or being otherwise concerned in any loan raised by, or on behalf of, the union board ; or
- (d) being a member of a society registered under the Co-operative Societies Act, 1912, which enters into any contract with the union board.

II of 1912.

(2) Nevertheless it shall not be lawful for a person having any share or interest, such as is described in clauses (a) and (b) of the proviso to sub-section (1), to act as a member of the union board in any matter relating to a contract or agreement between the union board and such company or the manager or publisher of such newspaper.

(3) Nothing in this section shall apply to the payment of fees to a legal practitioner for services rendered by him in his professional capacity.

61. Every union board may make compensation to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

Power to make compensation for damage.

62. (1) No member of a union board shall be personally liable for any contract made, or expense incurred, by or on behalf of the board.

Liability of members.

(Part I.—Chapter VI.—General provisions relating to union boards.—Part II.—Chapter VII.—Union benches and union courts.—Secs. 63-65.)

(2) Every member shall be personally liable for any wilful misapplication of money entrusted to the union board to which he shall knowingly have been a party, and he shall be liable to be sued for the same by the district board.

Bar to suits.

63. No suit or other legal proceeding shall lie against a union board, or any member or officer thereof acting under the direction of such board, in respect of anything done lawfully and in good faith and with due care and attention under this Act or any rule made hereunder.

No suit to be brought until after one month's notice of cause of action.

64. (1) No suit or other legal proceeding shall be brought against any union board or any of its members or officers, or any person acting under its direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such board, and also (if the suit is intended to be brought against any member or officer of the said board, or any person acting under its direction) at the place of abode of the person against whom such suit is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit : and unless such notice be proved, the court shall find for the defendant.

(2) Every such action shall be commenced within three months after the accrual of the cause of action, and not afterwards.

(3) If any union board or person to whom a notice under sub-section (1) is given shall, before a suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

PART II.

CHAPTER VII.

UNION BENCHES AND UNION COURTS.

Union benches.

Constitution of union bench.

65. Whenever a union board has been established for any union, the '[Provincial Government] may, by notification, appoint any two or more of the members of the board to be a union bench, during their term of office as members of the board, for the trial, in the whole or any part of the union, of the offences specified in Schedule IV, if committed within the limits of its jurisdiction ²or if the case is transferred to the bench by a district magistrate or subdivisional magistrate].

¹ See foot-note 3 on p. 617, *ante*.

² These words were added by s. 26 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

of 1919.]

(Part II.—Chapter VII.—Union benches and union courts.—
Secs. 66-68.)

Act V of
1898.

66. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the union bench shall have jurisdiction concurrent with that of the criminal court within the local limits of whose jurisdiction the union is situated, for the trial of all offences specified in Schedule IV, part A, and the union bench may try any offence specified in Schedule IV, part B, if the case is transferred to the bench by a district magistrate, subdivisional magistrate or any other magistrate empowered to receive petitions under section 190 of the Code of Criminal Procedure, 1888 :

Jurisdiction
of union
bench.

Provided as follows :—

- (a) a magistrate before whom a complaint of an offence cognizable by a union bench is brought may transfer the complaint to the union bench ;
- (b) the district magistrate or subdivisional magistrate may transfer any case from one union bench to another or to any other court subordinate to him ;
- ¹(c) the district magistrate or subdivisional magistrate may, with the consent of the parties, transfer any case cognizable by a union bench, if the place of residence of the complainant is situated in a union for which there is no union bench, to any union bench situated at a distance from such place of residence convenient in the opinion of the magistrate, for the parties and witnesses.

67. A case before a union bench may be instituted by petition, made orally or in writing to a member of the union bench. If the petition is made orally, the member shall record the name of the petitioner, the name of the person against whom the petition is brought, the nature of the offence and such other particulars, if any, as may be prescribed by rules under section 101, and shall direct the petitioner to appear before the bench.

How case may
be instituted.

68. (1) If upon the face of the petition, or on examining the petitioner, the union-bench is of opinion that the petition is frivolous, vexatious or untrue, it shall dismiss the case by order in writing.

Power of
bench to
dismiss or to
refuse to
entertain
petition.

(2) If at any time it appears to the bench :—

- (a) that it has no jurisdiction to try the case, or
- (b) that the offence is one for which the sentence which the bench is competent to pass would be inadequate, or
- (c) that the case is one which should not be tried by the bench,

it shall direct the petitioner to the proper court.

¹Clause (c) was added by s. 27 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

(Part II.—Chapter VII.—Union benches and union courts.—
Secs. 69-72.)

Dismissal of
case for
default.

69. If in any case before a union bench the petitioner fails to appear on the day fixed, or if in the opinion of the bench he shows negligence in prosecuting his case the bench may dismiss the case for default, and such order of dismissal shall operate as an acquittal.

Proceedings
preliminary
to trial.

70. (1) If the petition be not dismissed the union bench shall, subject to the provisions of section 98, by summons or otherwise, require the accused to appear and answer the petition.

(2) If the accused fails to appear or cannot be found, the bench shall report the fact to the nearest magistrate, who may issue a warrant for the arrest of the accused, and when arrested may forward him for trial to the bench, or release him on bail to appear before it.

(3) The union bench shall, if possible, try the case on the day on which the accused appears or is brought before it; but if that is not possible, the union bench shall release him on his executing a bond for a sum not exceeding twenty-five rupees to appear before the bench on any subsequent day or days to which the trial may be adjourned.

Bar to appeal
from or
revision of
the order of
union bench,
but power to
order retrial.

71. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, there shall be no appeal by a convicted person in any case tried by a union bench: Act V of 1898.

Provided that the district magistrate or subdivisional magistrate, if satisfied that a failure of justice has occurred, may, of his own motion, or on the application of the parties concerned, cancel or modify any order of conviction or of compensation made by a union bench or direct the retrial of any case by a court of competent jurisdiction subordinate to him.

Power of
union bench
to impose fine
or to award
compensation.

72. (1) A union bench shall record its decision in writing, and may sentence an offender convicted by it to pay a fine not exceeding twenty-five rupees or in default to imprisonment for a period not exceeding seven days:

¹Provided that the ²[Provincial Government] may, by notification, direct that any union bench mentioned therein may sentence any offender convicted by it to pay a fine not exceeding fifty rupees or in default to imprisonment for a period not exceeding fourteen days.

¹This proviso was added by s. 28 (1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²See foot-note 3 on p. 617, *ante*.

of 1919.]

(Part II.—Chapter VII.—Union benches and union courts.—
Sec. 72.)

¹(1a) When a union bench imposes a fine under sub-section (1), it may, when passing the order, direct that the whole or any part of the fine recovered shall be applied in payment of compensation for any loss or injury caused by the offence.

(2) If a union bench is satisfied that a complaint made before it or transferred to it for trial is vexatious or frivolous, the bench may order the complainant to pay to the accused such compensation, not exceeding twenty-five ²[or, in the case of a union bench empowered under the proviso to sub-section (1), fifty] rupees in all, as it thinks fit, or in default may sentence the complainant to simple imprisonment for a period not exceeding seven ³[or, in the case of a union bench empowered under the proviso to sub-section (1), fourteen] days.

(3) When a person has been sentenced to imprisonment under sub-section (1) or sub-section (2) in default of such payment, if such fine or compensation be not paid or realized within ten days of the passing of the sentence or order, or within such further time, if any, as the bench may allow, the bench may cause him to be arrested and may commit him to the nearest jail to serve his sentence :

Act XLV of 1860. Provided that, notwithstanding anything contained in the Indian Penal Code,—

(a) the fine imposed or compensation awarded by a union bench shall not be realized from any person who has served his term of imprisonment under this section ;

(b) the person serving his term of imprisonment shall be forthwith released, if the fine or compensation is paid before the expiry of the term of imprisonment :

Provided also that no woman shall be sentenced to imprisonment in default of payment of fine or compensation.

* * * * *

¹Sub-section (1a) was inserted by s. 28 (2) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²These words were inserted by s. 28 (3) (a), *ibid.*

³These words were inserted by s. 28 (3) (b), *ibid.*

⁴Sub-section (4) was omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Part II.—Chapter VII.—Union benches and union courts.—
Secs. 72A-74.)

Power of union bench to release certain offenders after admonition or on probation of good conduct.

172A. When any person is convicted by a union bench of an offence punishable under sub-section (1) of section 72 and no previous conviction is proved against him, if it appears to the said bench that, regard being had to the age, character and antecedents of the offender and to the circumstances in which the offence was committed, it is expedient—

(a) that the offender should be released after due admonition, the union bench may, instead of sentencing him to any punishment, release him after due admonition ; or

(b) that the offender should be released on probation of good conduct, the union bench may, notwithstanding anything contained in the Code of Criminal Procedure, 1898, instead of sentencing him at once to any punishment, direct that he be released on his executing a bond for a sum not exceeding fifty rupees to appear and receive sentence when called upon during such period (not exceeding one year) as the union bench may direct, and in the meantime to keep the peace and be of good behaviour.

Act V of 1898.

Power of union bench to permit compounding of offences.

172B. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the union bench may allow the parties to compound any offence tried by such bench.

Act V of 1898.

Union Courts.

Constitution of union court.

73. Whenever a union board has been established for a union, the ²[Provincial Government] may, by notification, appoint any two or more of the members of the board to be a union court during their term of office as members of the board, for the trial, in the whole or any part of the union, of all or any of the classes of civil suits specified in section 74.

Jurisdiction of union court.

74. Notwithstanding anything contained in the Bengal, Agra and Assam Civil Courts Act, 1887, the Provincial Small Cause Courts Act, 1887, and the Code of Civil Procedure, 1908, and subject to the provisions of sections 75 and 76, the union court and the ordinary civil court, within the local

XII of 1887, IX of 1887, Act V of 1908.

¹Sections 72A and 72B were inserted by s. 29 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²See foot-note 3 on p. 617, *ante*.

of 1919.]

(Part II.—Chapter VII.—Union benches and union courts.—
Sec. 75.)

limits of whose jurisdiction the union is situated, shall have concurrent jurisdiction to try the following classes of suits, namely :—

- (a) suits for money due on contracts ;
- (b) suits for the recovery of movable property or the value of such property ; ¹*
- (c) suits for compensation for wrongfully taking or injuring movable property, ²and
- (d) suits for damages by cattle-trespass.]

when the value of the suit does not exceed two hundred rupees :

Provided that, on the application of any defendant made in accordance with the provisions of section 81, the court of small causes or court of the munsif, within the local limits of whose jurisdiction the union is situated,—

- (i) may withdraw the suit when its value does not exceed twenty-five rupees, and
- ✓ (ii) shall withdraw the suit when its value exceeds twenty-five rupees,

from a union court for trial by itself.

75. No suit shall lie in any union court—

- (1) on a balance of partnership account,
- (2) for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will,
- (3) by or ³[against the Crown] or public officers in their official capacity,
- (4) by or against minors or persons of unsound mind,
- (5) for the assessment, enhancement, reduction, abatement, apportionment or recovery of rent of immovable property, or
- (6) by a mortgagee of immovable property for the enforcement of the mortgage by foreclosure or sale of the property or otherwise, or by a mortgagor of immovable property for the redemption of the mortgage.

Certain suits not to be tried by union court.

¹The word “ and ” was omitted by s. 30 (1) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VII of 1935).

²The word “ and ” and clause (d) were inserted by s. 30 (2), *ibid.*

³These words were substituted for the words “ against Government ” by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Part II.—Chapter VII.—*Union benches and union courts.*—
Secs. 76-81.)

Local limits
of jurisdiction
of union court.

76. No suit shall lie in any union court, unless at least one of the defendants resides within the limits of its jurisdiction at the time of the institution of the suit, and the cause of action has arisen wholly or in part within those limits.

How suit may
be instituted.

77. (1) A suit before a union court may be instituted by petition made orally or in writing. If the petition is made orally, the court shall record such particulars as may be prescribed by rules under section 101.

(2) The plaintiff on instituting his suit shall state the value of the claim.

Action to be
taken if suit
not triable
by a union
court.

78. (1) If at any time the union court is of opinion that the suit is barred by limitation, the court shall dismiss the suit by order in writing.

(2) If at any time it appears to the court that it has no jurisdiction to entertain the suit, the court shall direct the petitioner to the proper court.

Dismissal of
suit for
default.

79. If in any suit before a union court the plaintiff fails to appear on the day fixed, or, if in the opinion of the court, he shows negligence in prosecuting his suit, the court may dismiss the suit for default :

Provided that a union court may restore a suit dismissed for default, if within thirty days from the date of such dismissal the plaintiff satisfies the court that he was prevented by sufficient cause from appearing.

Summons to
defendant to
appear and
answer.

80. If on receiving the petition the union court is satisfied that the trial of the suit may be proceeded with, it shall, by summons or otherwise, require the defendant to appear and answer the suit either orally or in writing.

Postponement
on application
for transfer.

81. If, before ¹[any evidence is taken in] the suit, the defendant notifies to the union court that he has applied or that he intends to apply under the proviso to section 74 for the transfer of the suit to the court of small causes or the court of the munsif, the union court shall postpone the trial in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon.

¹These words were substituted for the words " the commencement of the hearing of " by s. 31 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

of 1919.]

(Part II.—Chapter VII.—Union benches and union courts.—
Secs. 82-86.)

82. If the defendant fails to appear, and the union court is satisfied that he has received notice of the date fixed for the hearing, the court may decide the suit *ex parte* :

Ex parte
decision.

Provided that any defendant against whom a suit has been decided *ex parte* may, within thirty days from the date of executing any process for enforcement of the decision, apply, orally or in writing, to the union court to set aside the order; and the court, if satisfied that the defendant did not receive due notice of the date of hearing or was prevented from appearing by any sufficient cause, shall set aside the decision and shall appoint a day for proceeding with the suit.

83. No decision or order of a union court shall be set aside under section 79 or section 82 unless notice in writing has been served by the union court on the opposite party.

No order to be
set aside
without
notice to
opposite party.

84. (1) Subject to the provisions of clauses (3) and (4) of section 75 the union court shall add as parties to a suit any persons whose presence as parties it considers necessary for a proper decision thereof, and shall enter the names of such parties in the register of suits, and the suit shall be tried as between the parties whose names are entered in the said register:

Power of
union court
to determine
necessary
parties.

Provided that when any party is added, notice shall be given to him and he shall be given an opportunity of appearing before the trial of the suit is proceeded with.

(2) In all cases where a new party appears under the proviso to sub-section (1) during the trial of a suit, he may require that the trial shall begin *de novo*.

85. No union court shall proceed with the trial of any suit in which the matter directly and substantially in dispute is pending for decision in the same court or in any other court in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, or has been heard and finally decided in a suit between the same parties, or between parties under whom they or any of them claim.

Certain suits
not to be tried
by union
court.

86. When the parties or their agents have been heard and the evidence on both sides considered, the union court shall, by written order, pass such decree as may seem just, equitable and according to good conscience, stating in the decree the amounts payable as fees under section 90, and the amount, if any, paid to witnesses under section 96, sub-section (3), and the persons by whom such amounts are payable.

Decision of
union court.

(Part II.—Chapter VII.—Union benches and union courts.—
Secs. 87-90.)**Instalments.**

87. A union court in ordering the payment of a sum of money or the delivery of any movable property may direct that the money be paid, or the movable property be delivered, by instalments.

Decision of union court to be final; but power to order retrial.

✓ **88.** The decision of a union court in every suit shall be final as between the parties to the suit:

Provided that the district judge may, on the application of any party to the suit made within thirty days of the decree of the union court, cancel or modify the order of the union court or direct a retrial of the suit by the same or any other union court or by any other court subordinate to him if he is satisfied that there has been a failure of justice.

Death of parties.

89. If the plaintiff or defendant in any suit dies before the suit has been decided, the suit may, subject to the provisions of clause (4) of section 75, be proceeded with at the instance of, or against, the legal representatives of the deceased plaintiff or defendant, as the case may be.

Fees.

90. (1) In all suits instituted in a union court a fee of one anna in the rupee shall be payable in advance by the plaintiff on the amount of the claim up to twenty-five rupees, and of half-an-anna for every rupee of the claim above twenty-five rupees, and such fees ²* * shall not be paid to either party :

Provided that, if any suit is transferred from a union court under section 74, no further fee shall be payable on this account in the court to which the suit is transferred, * * * * * and thereafter the provisions of sub-section (2) shall, so far as may be, apply to the proceedings in the court to which the suit is transferred.

(2) If the claim is decreed in full, an amount equal to the fee shall be realised from the judgment-debtor together with the amount decreed.

¹Section 90 was substituted for the original section 90 by s. 32 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²The words "shall, on receipt, be credited to the union fund and" were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The original words were omitted, *ibid.*

of 1919.]

(Part II.—Chapter VII—Union benches and union courts.—
Secs. 91-92.)

(3) If the claim is decreed in part, an amount equal to a proportionate part of the fee shall be realised from the judgment-debtor together with the amount decreed.

(4) Any amount realised under sub-section (2) or sub-section (3) shall be paid to the decree-holder.

91. (1) If the union court granting a decree is unable to effect satisfaction thereof, it shall grant the decree-holder a certificate to that effect stating the amount due to him and the amount due on account of fees under section 90. Execution of decree.

(2) Any decree-holder wishing to execute a decree of a union court may apply to the court of the munsif within the local limits of whose jurisdiction the union is situated and shall present with his application a certified copy of the order of the union court; but no application for execution shall be entertained by the munsif—

(a) unless the union court has certified that it is unable to effect satisfaction of the decree, and

(b) unless the application is made after the expiry of three months from the date of the decree.

(3) In executing a decree of a union court a munsif shall have the same powers and follow the same procedure as if he were executing a decree passed by himself ¹* *

291A. An application for execution of a decree of a union court made after the expiry of three years from the date of the decree or of any order under section 88 modifying any such decree, shall be dismissed, although limitation has not been pleaded : Limitation for execution of decree or order.

Provided that, where the application is made for execution of a decree or order to enforce payment of a sum of money or delivery of any movable property which the decree or order directs to be made at a certain date, the application may be made within three years from that date.

92. [Sums realised in part satisfaction of demand to be distributed rateably.] Omitted by s. 33 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

¹The words "but any amount realised on account of fees under section 90 shall be credited to the Local Government" were omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Section 91A was inserted by s. 2 of the Bengal Village Self-Government (Second Amendment) Act, 1932 (Ben. Act XVIII of 1932).

(Part II.—Chapter VII.—Union benches and union courts.—
Secs. 93-96.)*General provisions relating to union benches and union courts.*

Procedure by
union benches
and union
courts.

✓ 93. (1) The provisions of—

- (a) the Court-fees Act, 1870,
- (b) the Code of Criminal Procedure, 1898, excepting Chapter XXXIII, and
- (c) the Code of Civil Procedure, 1908 ;

VII of
1870.
Act V of
1898.
Act V of
1908.

shall not apply to any trial, suit or proceeding before a union bench or a union court.

(2) The procedure to be followed by a union bench or a union court in any trial, suit or proceeding and in the enforcement of its decisions and orders, and in the method of forming a quorum shall, subject to the provisions of this Act, be in accordance with rules prescribed under section 101.

Persons who
are to preside
over union
bench or union
court.

✓ 94. (1) The union bench and the union court shall be presided over by the president of the union board, if he is a member of the bench or court.

(2) If the president of the union board is absent from a sitting of the union bench or court, or if he is not a member of the bench or court, the bench or court, as the case may be, shall elect its own president.

(3) In case of difference of opinion among the members of the bench or court the decision or order of the bench or court shall follow the opinion of the majority of the members present and voting.

(4) In case of an equality of votes, the person presiding over the bench or court shall have a second or casting vote.

Union bench or
union court not
to try case or
suit in which the
local union board
or any member
is interested.

95. No union bench or union court shall try any case or suit or other proceeding to or in which the local union board or any member thereof is a party or is interested.

Attendance of
witnesses.

96. (1) Subject to the provisions of section 98, a union bench or a union court may, by summons or otherwise, send for any person to appear and give evidence or to produce or cause the production of any document :

¹Section 95 was substituted for the original section 95 by s. 34 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

of 1919.]

(Part II.—Chapter VII.—Union benches and union courts.—
Secs. 97, 98.)

Act V of
1908.

Provided that no person who is exempt from personal appearance in court under section 133, sub-section (1), of the Code of Civil Procedure, 1908, shall be required to appear in person before a union court.

(2) A union bench or a union court shall refuse to summon a witness or to enforce a summons already issued against a witness, where, in the opinion of the bench or court, the attendance of the witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(3) A union bench or union court shall not require any person living outside the union to give evidence, unless such a sum of money be paid to him as appears to the bench or court to be sufficient to defray his travelling and other expenses in passing to and from the bench or court and for one day's attendance.

(4) If any person whom a union bench or a union court summons by written order to appear or give evidence, or to produce any document before it fails to obey such summons a union bench may take cognizance of such offence and may sentence any person convicted thereof to a fine not exceeding twenty-five rupees.

97. (1) The parties to cases triable by a union bench shall appear personally before such bench :

Appearance of
parties before
union bench or
union court.

Provided that the union bench, if it sees reason so to do, may dispense with the personal attendance of an accused and permit him to appear by agent.

(2) The parties to suits triable by a union court may appear by agent.

" Agent " in sub-sections (1) and (2) means a full-time servant or a partner or a relative of the party, whom the union bench or union court may admit as a fit person to represent a party, and who is authorized to appear and plead for such party.

XVIII of
1879.

(3) Notwithstanding anything contained in the Legal Practitioners Act, 1879, legal practitioners shall not be permitted to practise before a union bench or union court.

98. No woman shall, against her will, be compelled to appear in person before a union bench as an accused, or before a union bench or union court as a witness.

Appearance of
women.

(Part II.—Chapter VII.—Union benches and union courts.—
Secs. 99—100C.)Realization of
fees, fines, etc.

99. All fees and fines imposed and all sums due on bonds and all sums decreed and compensation awarded under this Act by a union bench or union court may be realized under the orders of the union bench or union court, as the case may be, in the same manner as an arrear of rate imposed under section 37.

Registers and
records.

100. Every union bench and union court shall maintain such registers and records and submit such returns as may be prescribed by rules under section 101.

Resignation of a
member of union
bench or union
court.

100A. A member of a union bench or union court may resign during his term of office by notifying in writing his intention to do so to the district magistrate and, on such resignation being accepted by the district magistrate, shall be deemed to have vacated his office.

Casual
vacancies.

100B. When the place of a member of a union bench or union court becomes vacant by his resignation or otherwise a new member shall be appointed by the ²[Provincial Government] in the manner provided by section 65 or section 73, as the case may be, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Provided that the ²[Provincial Government] may with regard to union boards generally or to any union board or class of union boards and subject to such conditions or restrictions as it may deem fit to impose, by notification, delegate to the commissioner the powers of appointment of the ²[Provincial Government] under this section :

Provided also that no act of the union bench or union court shall be deemed to be invalid by reason only that the number of members of the union bench or union court at the time of the performance of such act was less than the prescribed number.

Delegation of
powers by the
Provincial
Government.

✓ **100C.** The ²[Provincial Government] may with regard to union boards generally or to any union board or class of union boards and subject to such conditions or restrictions as it may deem fit to impose, by notification, delegate to the commissioner the power to reconstitute a union bench under section 65 or a union court under section 73.

¹Sections 100A to 100D were inserted by s. 35 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²See foot-note 3 on p. 617, *ante*.

of 1919.]

(Part II.—Chapter VII.—Union benches and union courts.
—Part III.—Chapter VIII.—Miscellaneous.—Secs.
100D, 101.)

100D. (1) The commissioner may, subject to the approval of the ²[Provincial Government] by an order in writing, at any time, for good and sufficient reason to be stated in such order, remove a member of a union bench or union court.

Removal of a member of union bench and union court.

(2) Before removing a member under sub-section (1) the commissioner shall allow the member concerned an opportunity of being heard.

PART III.

CHAPTER VIII.

MISCELLANEOUS.

101. (1) The ²[Provincial Government] may, after previous publication, make rules to carry out the purposes of this Act.

Power of Provincial Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the ²[Provincial Government] may make rules—

- (a) determining the manner and time of appointment or election of members of union boards, the action to be taken under section 6, sub-section (4), in the case of the failure of an election, the registration of voters and candidates and the manner in which the votes shall be taken, and generally regulating all elections under this Act; ³* *

- ⁴(aa) prescribing the period of twelve months referred to in sub-section (3) of section 7;

- (b) fixing the time within which the elections of the president of a union board shall be held, and the time within which an election to fill a casual vacancy in such office shall be held;

- (c) regulating the powers of union boards to transfer property;

- (d) prescribing the powers to be exercised by the president or vice-president of a union board;

¹See foot-note 1 on p. 660, *ante*.

²See foot-note 3 on p. 617, *ante*.

³The words "and determining the authority who shall decide disputes relating to such elections" were omitted by s. 36(a) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁴Clause (aa) was inserted by s. 18 of the Bengal Local Self-Government (Amendment) Act, 1936 (Ben. Act XIV of 1936). This clause is in force in the areas in which s. 18 of Ben. Act XIV of 1936 is in force.

(Part III.—Chapter VIII.—Miscellaneous.—Sec. 101.)

- (e) regulating the conduct of meetings of union boards and the method of forming a quorum;
- (f) prescribing the registers and records to be maintained and the returns to be submitted by union boards, union benches and union courts ;
- (g) regulating the powers and duties of union boards in regard to the control to be exercised by them over dafadars and chaukidars within the union ;
- (h) prescribing the duties of dafadars and chaukidars, and fixing the time and manner of the payment by the union board of the salaries of dafadars and chaukidars, and the cost of their equipment ;
- (i) prescribing the processes to be served by dafadars or chaukidars, and regulating the service of such processes ;
- ¹(j) regulating the powers and duties of union boards in regard to sanitation, conservancy, drainage, buildings, roads, bridges and water-supply under sections 26, 27, 28, 29, 30, 31 and 35, and in regard to *schools* and dispensaries, ⁴[libraries and reading rooms] under section 32 ;
- ²(j) regulating the powers and duties of union boards in regard to sanitation, conservancy, drainage, buildings, roads, bridges and water-supply under sections 26, 27, 28, 29, 30, 31 and 35, and in regard to ³* * dispensaries, ⁴[libraries and reading rooms] under section 32 ;
- ⁵(jj) regulating the manner of constituting a joint committee under section 32AA, the proceedings of such joint committee, the conduct of its correspondence and the method of keeping its accounts ;

¹This clause in this form is in force in areas in which the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930), is not in force.

²This clause in this form is in force in areas in which the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930), is in force.

³The words "schools and" were omitted by s. 67 of the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930).

⁴These words were inserted by s. 5 of the Bengal Village Self-Government (Amendment) Act, 1932 (Ben. Act IX of 1932).

⁵Clause (jj) was inserted by s. 6 of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

of 1919.]

(Part III.—Chapter VIII.—Miscellaneous.—Sec. 101.)

- ¹(jj1) prescribing the pay and qualifications of staff required for the furtherance of public health under section 26 ;
- ¹(jj2) regulating the powers of the union board to grant rewards under section 26B ;
- (k) for the making of an assessment by the union board under section 39, for imposing the rate under section 37, and prescribing under section 41 the method and time of payment of such rate ;
- (l) for the conduct of the distraint and sale of movable property of defaulters under section 42 ;
- (m) prescribing the method in which the accounts of the union fund shall be kept and audited ;
- (n) regulating the realization and disbursement, under section 54, of the amount required to meet the arrears therein specified ;
- (o) prescribing the manner in which orders under section 56 shall be published ;
- (p) prescribing the particulars of petitions under sections 67 and 77 which shall be entered in the registers of union benches and union courts ;
- (q) regulating the procedure to be followed by a union bench or a union court in the institution, trial and disposal of criminal cases and civil suits, and prescribing the method of forming a quorum ;
- ²(qq) regulating the procedure for the transfer of criminal cases from union benches and of civil suits from union courts and for the retrial of civil suits under the proviso to section 88 ;
- (r) regulating the issue, service or execution of summonses and other processes by union benches or union courts, and the issue and service of notices by union boards ;
- (s) determining the procedure for the execution of decrees, orders and sentences of union courts and union benches ;
- (t) regulating the transfer by union benches or union courts of summonses and other processes to ordinary courts for their service or execution by such courts ; and
- (u) prescribing the fees to be levied by union benches and union courts for copies of documents, and determining the procedure to be followed in furnishing such copies.

¹Clauses (jj1) and (jj2) were inserted by s. 36(b) of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

²Clause (qq) was inserted by s. 36(c), *ibid*.

(Part III.—Chapter VIII.—Miscellaneous.—Secs.
101A—103.—Schedule I.—Enactments repealed or amended.)

(3) The rules made under sub-section (2) shall be published in such manner as the ¹[Provincial Government] may direct.

Power of union board to make by-laws.

101A. (1) A union board, empowered in this behalf by the commissioner on the recommendation of the district board, may make by-laws not inconsistent with those of the district board for carrying out the purposes specified in sub-clauses (b), (c) and (d) of clause (1) of section 26 and for the prevention of encroachments on village roads; and any such by-law may provide that a breach of it shall be punishable with a fine not exceeding fifty rupees.

(2) By-laws made under this section shall have the force of law when confirmed by the commissioner and published in such manner and for such time as the commissioner may direct.

Members* of union board, etc., not to bid for or buy property sold.

102. No member of a union board, union bench or union court, or other officer having any duty to perform in connection with any sale under this Act, shall directly or indirectly bid for or acquire any interest in any property sold at such sale.

Membership not a bar to trial of cases.

103. A judge or a magistrate shall not be deemed to be a party to, or personally interested in, any case under this Act, within the meaning of section 556 of the Code of Criminal Procedure, 1898, merely because he is a member of the union board.

Act V of 1898.

SCHEDULE I.

ENACTMENTS REPEALED OR AMENDED.

[Not printed here. The repeals and Amendments have been shown in the parent Acts.]

¹See foot-note 3 on p. 617, *ante*.

²Section 101A was inserted by s. 7 of the Bengal Village Self-Government (Amendment) Act, 1931 (Ben. Act V of 1931).

of 1919.]

(Schedule II.—Offences to be reported by a *chaukidar*.—

Schedule III.—Powers and duties which may be delegated by the district magistrate.)

SCHEDULE II.

OFFENCES TO BE REPORTED BY A CHAUKIDAR.

(See section 23.)

Murder, culpable homicide, rape (when the offender is not the husband of the woman raped), dacoity, robbery, theft, mischief by fire, house-breaking, counterfeiting currency notes, coins or stamps, possessing instruments or materials for the purposes of such counterfeiting, causing grievous hurt, riot, administering stupefying drugs, kidnapping, personating public servants, manufacturing, selling or possessing arms without a license and going armed without a license, and all attempts, preparations and conspiracies to commit, and abetments of, the said offences.

SCHEDULE III.

POWERS AND DUTIES WHICH MAY BE DELEGATED BY THE DISTRICT MAGISTRATE.

(See section 47.)

Powers or duties.	To whom may be delegated.
1	2
1. [Appointment and] dismissal of <i>dafadars</i> and <i>chaukidars</i> under section 20.	Subdivisional magistrate, Superintendent of police or circle officer.
2. Fining of <i>dafadars</i> and <i>chaukidars</i> under section 22.	Ditto.
3. Requiring <i>chaukidar</i> to supply local information under section 23 (viii).	Subdivisional magistrate.
4. Calling for assessment papers and passing of orders thereon, under section 40.	Ditto.
5. Issue of warrant under section 43 for distraint and sale of property of absentees for satisfaction of union rate.	Ditto.

The words "Appointment and" are unnecessary in view of the adaptation made in section 20(1) by the Government of India (Adaptation of Indian Laws) Order, 1937.

(Schedule IV.—Offences triable by a union bench.)

SCHEDULE IV.

OFFENCES TRIABLE BY A UNION BENCH.

(See sections 65 and 66.)

PART A.

1. Offences under sections 24, 26 and 27 of the Cattle-trespass Act, 1871. I of 1871.
2. Offences under enactments ¹[(other than the Indian Penal Code and this Act)] or any rules or by-laws made thereunder which are punishable with fine only up to a limit of twenty-five rupees. Act XLV of 1860.
3. Offences under section 34 of the Police Act, 1861. V of 1861.
4. Offences under the Bengal Ferries Act, 1885, except those under sections 28 and 30. Ben. Act I of 1885.
5. Offences under the following sections of the Indian Penal Code, namely :—sections 160, 178, 179, 269, 277, 289, 290, 294, 323, 334, 341, 352, 358, 426, 447, 448, 504 and 510; and when the value of the property in the opinion of the union bench is not over twenty rupees, sections 379 and 411.

PART B.

Offences under the following sections of the Indian Penal Code, namely :—sections 283, 428, 430, 506 and 509; and when the value of the property in the opinion of the magistrate is not over twenty rupees, section 403.

¹These words were substituted for the words “(other than the Indian Penal Code)” by s. 37 of the Bengal Village Self-Government (Amendment) Act, 1935 (Ben. Act VIII of 1935).

Bengal Act VI of 1919.

(The Bengal Food Adulteration Act, 1919.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title and local extent.
2. Definitions.
3. Power of Provincial Government or local authority to appoint public analyst.
4. Power of Provincial Government to declare normal constituents of any article of food.

CHAPTER II.

GENERAL PROVISIONS.

Sale of food.

5. Prohibition of sale, etc., of food not of the proper nature, substance or quality.
6. Prohibition of sale, etc., of articles of food which are not of the proscribed standard of purity.
7. Prohibition of adulterants in places where ghee, wheat flour, etc., are manufactured.
8. (*Repealed.*)

Analysis of food.

9. Power of purchaser to have article of food analysed.
10. Compulsory sale of food, etc. for purpose of analysis.
11. Procedure for analysis of food.

Inspection and seizure of food.

12. Power to seize food which is believed to be adulterated.
13. Food, etc., seized under section 12 to be taken before Magistrate.

Miscellaneous.

14. Duty of public analyst to supply certificate of analysis.
15. Cognizance of offences.
16. Jurisdiction.
17. Limitation for prosecutions.
18. (*Omitted.*)
19. Certain persons to be deemed public servants.
20. Power of Provincial Government to make rules.

CHAPTER III.

PENALTIES.

21. Penalties.

THE SCHEDULE.—FORM OF CERTIFICATE.

Bengal Act VI of 1919.

(The Bengal Food Adulteration Act, 1919.)¹

(30th July 1919.)

An Act to make provision for the prevention of adulteration of food in Bengal.

WHEREAS it is expedient to make provisions for the prevention of adulteration of food in Bengal ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Food Adulteration Act, 1919.

Short title
and local extent.

(2) This section shall extend to the whole of Bengal except Calcutta as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899²; and the ³[Provincial Government] may, after previous publication, by notification in the ⁴[*Official Gazette*], extend all or any of the other sections of this Act to any local area outside Calcutta in Bengal.

Ben. Act
III of
1899.

(3) The ³[Provincial Government] in extending all or any of the sections of this Act, as provided in sub-section (2), may extend the same in respect of all articles of food or may limit the operation of the section or sections extended to any specified article of food.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) an article of food shall be deemed to be “adulterated” if it has been mixed or packed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance or nature ;

¹For Statement of Objects and Reasons, see *Calcutta Gazette*, 1918, Pt. IV, p. 179, and for proceedings in Council, see *ibid.*, Pt. IVA, pp. 1027-1030, and see *Calcutta Gazette*, 1919, Pt. IVA, pp. 146-148, 518-520 and 983-994. This Act is to be deemed as repealed in the area added to Calcutta by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923), s. 2 (2) (b). For the Sale of Food and Drugs and for Milk Supply in Calcutta, see *ibid.*, Pt. V., Chapters XXVIII and XXIX.

²Bengal Act III of 1899 has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

³These words were substituted for the words “Local Government” by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words “*Calcutta Gazette*”, *ibid.*

[Ben. Act VI

(Chapter I.—Preliminary.—Secs. 3, 4.)

- (2) "food" includes every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food; and also includes flavouring matters and condiments;
- (3) "local area" means any area, urban or rural, declared by the ¹[Provincial Government] by notification in ²[*Official Gazette*] to be a local area for the purposes of this Act;
- (4) "local authority" means—
- (i) in the case of any Municipality, the Municipal Commissioners;
 - (ii) in the case of a Cantonment, the Cantonment Authority; and
 - (iii) in the case of any other local area, such authority or officer as the ¹[Provincial Government] may appoint in this behalf;
- (5) "Public analyst" means any person appointed by the ¹[Provincial Government], or by a local authority with the approval of the ¹[Provincial Government], to perform the duties and to exercise the powers of a public analyst prescribed by this Act.

Power of
Provincial
Government or
local authority
to appoint
public analyst.

3. The ¹[Provincial Government], or a local authority with the approval of the ¹[Provincial Government], may appoint a person to be the public analyst for any area under their control, and such appointment shall be notified in the ²[*Official Gazette*].

Power of
Provincial
Government
to declare normal
constituents of
any article of
food.

4. The ¹[Provincial Government] may declare the normal constituents of any article of food and may determine, by rules in this behalf, what deficiency in any of these constituents, or what addition of extraneous matters or proportion of water in a sample of any article of food, shall, for the purposes of this Act, raise a presumption until the contrary is proved that the article of food is not genuine or is injurious to health; and a public analyst shall have regard to such rules in certifying the result of any analysis under this Act.

¹See foot-note 3 on p. 669, *ante*.

²See foot-note 4 on p. 669, *ante*.

of 1919.]

(Chapter II.—General Provisions.—Sec. 5.)

CHAPTER II.

GENERAL PROVISIONS.

Sale of food.

5. (1) No person shall, directly or indirectly, himself or by any other person on his behalf, sell to the prejudice of the purchaser any article of food which is not of the nature, substance or quality of the article demanded by such purchasers; and no person shall, directly or indirectly, himself or by any other person on his behalf, manufacture for sale any article of food which is not of the nature, substance or quality which it purports or is represented to be :

Prohibition of sale, etc., of food not of the proper nature, substance or quality.

Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say :—

- (a) where any matter or ingredient not injurious to health has been added to any article of food because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight or measure of the article or to conceal the inferior quality thereof; or
- (b) where any article of food is unavoidably mixed with some extraneous matter in the process of collection or preparation; or
- (c) where a patent has been granted under any law for the time being in force in respect of any article of food, and the article is sold in the state required by the specification of the patent.

(2) In any prosecution under this section it shall be no defence to allege that the vendor or manufacturer was ignorant of the nature, substance or quality of the article sold, exposed for sale or manufactured for sale by him.

(3) In any prosecution under this section, the Court shall, unless and until the contrary is proved, presume that any article of food found in the possession of a person who is in the habit of manufacturing like articles for sale has been manufactured for sale by such person.

[Ben. Act VI]

(Chapter II.—General Provisions.—Sec. 6.)

Prohibition of sale, etc., of articles of food which are not of the prescribed standard of purity.

6. (1) No person shall, directly or indirectly, himself or by any other person on his behalf, sell, expose for sale or manufacture or store for sale, any of the following articles, namely :—

- (a) milk 1* * *,
- (b) butter,
- (c) ghee,
- (d) wheat flour,
- (e) mustard oil, and
- (f) any other article of food which may be notified by the ²[Provincial Government] in this behalf,

unless the following conditions are fulfilled, namely :—

(i) in the case of milk (other than condensed, sterilized or desiccated milk in hermetically closed receptacles), the animal from which the milk is derived shall be definitely stated in such manner as the local authority may, by general or special order, require, and the article sold, exposed for sale or stored for sale, as the case may be, shall be the natural secretion from the udder of such animal, from which no ingredient has been extracted and to which no water or other substance (including any preservative) has been added, and shall not contain a less proportion of non-fatty solids and of fat than such as the ²[Provincial Government] may prescribe ;

³(ia) in the case of condensed, sterilized or desiccated milk in hermetically closed receptacles, each such receptacle shall be labelled and marked in such manner as the ²[Provincial Government] may prescribe and the article sold, exposed for sale or stored for sale, as the case may be, shall not contain a less proportion of non-fatty solids and of fat than such as the ²[Provincial Government] may prescribe ;

(ii) in the case of butter, it shall be exclusively derived from milk or cream (other than condensed, sterilized or desiccated milk, or cream), or both with or without salt, or other preservative,

¹The words " (other than condensed, sterilized or desiccated milk, in hermetically closed receptacles) " were omitted by s. 2(1) (a) of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

²See foot-note 3 on p. 669, ante.

³Clause (ia) was inserted by s. 2(1) (b) of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

of 1919.]

(Chapter II.—General Provisions.—Sec. 6.)

and with or without the addition of colouring matter, such preservative or colouring matter being of such a nature and in such quantity as not to render the article injurious to health, and shall not contain a greater proportion of water than may be prescribed by the ¹[Provincial Government] in this behalf ;

- (iii) in the case of ghee, it shall contain only substances, other than curds, which are derived exclusively from the milk of cows or of buffaloes, and shall fulfil such conditions as may be prescribed by the ¹[Provincial Government].
- (iv) in the case of wheat flour, it shall not contain any substance which is not derived exclusively from wheat ;
- (v) in the case of mustard oil, it shall be derived exclusively from mustard seed ; and
- (vi) in the case of any food notified by the ¹[Provincial Government] under clause (f), it shall fulfil such conditions as may be prescribed by the ¹[Provincial Government] in regard to such food.

(2) No person shall, directly or indirectly, himself or by any other person on his behalf, sell, expose for sale, or manufacture or store for sale anything which is similar to any of the articles specified in clauses (a), (b), (c), (d) and (e) of sub-section (1) or to any article notified by the ¹[Provincial Government] under clause (f) of that sub-section, under a name which in any way resembles the name of such article.

²(2a) No person shall, directly or indirectly, himself or by any other person on his behalf, sell, expose for sale or manufacture or store for sale any food in the preparation of which any of the articles specified in clauses (a), (b), (c), (d) and (e) of sub-section (1) or any article notified by the ¹[Provincial Government] under clause (f) of that sub-section has been used unless such article fulfils the conditions set forth in that sub-section.

(3) In any prosecution under this section it shall be no defence to allege that the vendor, manufacturer or storer was ignorant of the nature, substance or quality of the article sold, exposed for sale, or manufactured or stored

¹See foot-note 3 on p. 669, *ante*.

²Sub-section (2a) was inserted by s. 2(2) of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

(Chapter II.—General Provisions.—Secs. 7-10.)

for sale by him ¹[or of any article used in the preparation of any food sold, exposed for sale, or manufactured or stored for sale by him].

(4) In any prosecution under this section the Court shall, unless and until the contrary is proved, presume that any of the articles specified in clauses (a), (b), (c), (d) and (e) of sub-section (1) or any article notified by the ²[Provincial Government] under clause (f) of that sub-section ³[or the food referred to in sub-section (2a)] found in the possession of a person who is in the habit of manufacturing or storing like articles for sale has been manufactured or stored for sale by such person.

Prohibition of adulterants in places where ghee, wheat flour, etc., are manufactured.

7. (1) No person shall keep or permit to be kept in any manufactory, shop or place, in which butter, ghee, wheat flour, mustard oil or any article notified by the ²[Provincial Government] under clause (f) of sub-section (1) of section 6 is manufactured, any substance intended to be used for the adulteration of such butter, ghee, wheat flour, mustard oil or other article.

(2) If any article capable of being so used is found in such manufactory, shop or place, the Court shall, unless and until the contrary is proved, presume in any prosecution under this section that it is intended to be used for the purposes of adulteration.

8. [Receptacles for separated or skimmed condensed milk to be marked.] Rep. by s. 3 of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

Analysis of food.

Power of purchaser to have article of food analysed.

9. Any purchaser of an article of food shall be entitled, on payment of such fee as the ²[Provincial Government] may prescribe, to have such article analysed by the public analyst appointed for the area within which such article is purchased and to receive from him a certificate, in the form prescribed in the schedule to this Act, of the result of his analysis.

Compulsory sale of food, etc., for purpose of analysis.

10. (1) Any person duly authorised by the ²[Provincial Government] or by any local authority empowered by the ²[Provincial Government] in this behalf, may require, on

¹These words were inserted by s. 2 (3) of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

²See foot-note 3 on p. 669, *ante*.

³These words were inserted by s. 2 (4) of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

of 1919.]

(Chapter II.—General Provisions.—Sec. 11.)

tendering the price for it, the sale to him during the process of manufacture, for the purpose of analysis, of such quantity of—

- (i) any food, or
- (ii) any ingredients used in the manufacture of food,

as is reasonably requisite for division and disposal under section 11; and any person in possession of the said food or ingredients shall be bound to sell such quantity.

(2) Any person duly authorised by the ¹[Provincial Government] or by any local authority empowered by the ¹[Provincial Government] in this behalf, may also require the surrender to himself, for the purpose of analysis, of such quantity as is reasonably requisite for division and disposal under section 11, of any food which for the purpose of sale is —

- (a) in course of transit in any local area, or
- (b) stored in any place in the said local area :

and any person in possession of the said food shall be bound to surrender such quantity :

Provided that in every such case the price of the food so surrendered shall be payable from such fund as the ¹[Provincial Government] may prescribe to the owner of the food, if claimed by such owner within one month from the date of the said surrender.

(3) Any person duly authorised by the ¹[Provincial Government] or by any local authority empowered by the ¹[Provincial Government] in this behalf, may also require, by tender of the price, the sale to him, for the purpose of analysis, of such quantity of any food exposed or intended for sale, as is reasonably requisite for division or disposal under section 11 : and any person in possession of or exposing the same for sale shall be bound to sell such quantity.

11. (1) Any purchaser who wishes to have an article of food analysed under section 9, and any person who purchases for the purpose of analysis, a sample of food under section 10, sub-section (1) or sub-section (3), shall, after the purchase has been completed, forthwith notify to the seller, or his agent selling the article, his intention to have the same analysed, and shall divide the article into three parts, to be then and there separated, and each part to be marked and sealed or fastened up in any manner which its nature will permit.

Procedure
for analysis
of food.

¹See foot-note 3 on p. 669, ante.

(Chapter II.—General Provisions.—Secs. 12, 13.)

(2) The person purchasing the article or sample shall deliver one of the said parts to the seller or his agent, and shall retain another part for future comparison, and shall send the remaining part to the public analyst appointed for the area where the article is sold.

(3) When any food is surrendered under section 10, sub-section (2), the person to whom it is surrendered shall forthwith notify to the person in charge of the said food his intention to have the same analysed, and shall thereupon deal with the food so surrendered in the manner provided in sub-sections (1) and (2).

Inspection and seizure of food.

Power to seize food which is believed to be adulterated.

12. (1) Any person duly authorised in this behalf by rule made under this Act may, at any time by day or by night, inspect, and examine any food which is being manufactured for sale, or is in course of transit or stored for sale, or is hawked about or exposed for sale, and any utensil or vessel used for preparing, manufacturing or containing any such food; and no person shall offer resistance to, or obstruct, any such inspection or examination.

(2) If the person so authorised has reason to believe any such food to be adulterated, he may seize and remove such food, utensil or vessel in order that the same may be dealt with in accordance with the provisions of section 13; and no person shall offer resistance to, or obstruct, any such seizure or removal.

(3) The person authorised as aforesaid may, instead of carrying away any food, utensil or vessel seized under sub-section (2), leave the same in such safe custody as he thinks fit in order that the same may be dealt with as provided in section 13; and no person shall remove such food, utensil or vessel from such custody or interfere or tamper with the same in any way while so detained.

(4) When any food is seized under sub-section (2), the person seizing it shall separate therefrom such quantity as is reasonably requisite for division and disposal for the purposes of this sub-section, and shall thereupon divide and dispose of such quantity in the manner provided in section 11, sub-sections (1) and (2).

Food, etc., seized under section 12 to be taken before Magistrate.

13. (1) Any food, utensil or vessel seized under section 12, sub-section (2), shall, subject to the provisions of sub-sections (3) and (4) of that section, be taken as soon as may be after such seizure, before a Magistrate.

of 1919.]

(Chapter II.—General Provisions.—Secs. 14, 15.)

(2) If it appears to the Magistrate that any such food is adulterated, or that any such utensil or vessel is used for preparing, manufacturing or containing the same, he shall cause the food, utensil or vessel to be forfeited to the local authority for the area in which the seizure has taken place, in order that it may be destroyed or otherwise disposed of by that authority, at the cost of the person in whose possession it was at the time of its seizure, and such cost shall be realised as if it were a fine imposed under this Act.

(3) If it appears to the Magistrate that any such food is not adulterated, or that any such utensil or vessel is not used for preparing, manufacturing or containing the same, the person from whose shop or place the food, utensil or vessel was taken shall be entitled to have it restored to him, and it shall be in the discretion of the Magistrate to award to such person from such fund as the ¹[Provincial Government] may prescribe in this behalf, such compensation, not exceeding the actual loss which he has sustained, as the Magistrate may think proper.

Miscellaneous.

14. (1) Every public analyst to whom any article of food has been submitted for analysis under this Act, shall deliver to the person so submitting it a certificate in the form prescribed in the schedule to this Act, specifying the result of his analysis, and shall send a copy of the same to the local authority concerned.

Duty of public analyst to supply certificate of analysis.

(2) Any document purporting to be such certificate signed by a public analyst shall be sufficient evidence in any inquiry, trial or proceeding under this Act of the result of such analysis :

Provided that any Court before which a case may be pending under this Act, whether exercising original, appellate or revisional jurisdiction, may, of its own motion, or at the request either of the accused or the complainant, cause any article of food to be sent for analysis to the Sanitary Commissioner for Bengal, or any other officer whom the ¹[Provincial Government] may appoint in this behalf, who shall thereupon analyse the same and report the result of such analysis to the said Court, and the said report shall be admissible in evidence in such Court. The expense of such analysis shall be paid by the accused or the complainant as the Court may, by order, direct.

15. No prosecution for any offence under this Act shall be instituted without the order or consent in writing of the local authority within whose jurisdiction the offence is committed :

Cognizance of offences.

¹See foot-note 3 on p. 669, *ante*.

(Chapter II.—General Provisions.—Secs. 16-20.)

¹Provided that in the case of an offence committed within a municipality such order or consent shall be valid if made or given by the Chairman of the Commissioners of the Municipality.

Jurisdiction.

16. No Magistrate whose powers are less than those of a Magistrate of the second class shall try any offence under this Act.

Limitation for prosecutions.

17. No summons shall issue for the attendance of any person accused of an offence under this Act unless the same is applied for within thirty days from the date upon which the order of consent referred to in section 15 shall have been made or given.

18. [*Fines, etc., how to be credited.*] Omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Certain persons to be deemed public servants.

19. Every person authorised under section 12 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act
XLV
of 1860.

Power of Provincial Government to make rules.

20. (1) The ²[Provincial Government] may, subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the ²[Provincial Government] may make rules—

(a) determining what deficiencies in or additions to any article of food, the normal constituents of which have been declared under section 4, shall raise the presumption that such article is not genuine or is injurious to health ;

(b) prescribing the proportion of non-fatty solids and of fat which must be contained in milk sold, exposed for sale or stored for sale ;

¹This proviso was added by s. 2 of the Bengal Food Adulteration (Amendment) Act, 1925 (Ben. Act V of 1925).

²See foot-note 3 on p. 669, *ante*.

of 1919.]

(Chapter III.—Penalties.—Sec. 21.)

- ¹(bb) specifying the manner in which each receptacle containing condensed, sterilized or desiccated milk sold, exposed for sale, or stored for sale, is to be labelled and marked, including the size of the lettering, the description of the contained article, its composition and directions for use ;
- (c) prescribing the maximum proportion of water which may be contained in butter sold, exposed for sale or stored for sale ;
- (d) prescribing the conditions to be fulfilled by any food notified by the ²[Provincial Government] under clause (f) of sub-section (1) of section 6 ;
- (e) providing for the appointment by the ²[Provincial Government] or by any local authority empowered by the ²[Provincial Government] in this behalf, of persons to perform the duties and to exercise the powers mentioned in section 10, or section 12 ;
- (f) prescribing the fees to be charged by a public analyst for analysing articles of food under this Act ; and

3* * * *

CHAPTER III.

PENALTIES.

21. Whoever contravenes any of the provisions of this Act mentioned in the first column of the following table shall be punished, for a first offence, with fine to the extent mentioned in that behalf in the third column of the said table, and, for a second or subsequent offence, with fine or imprisonment, or with both, to the extent mentioned in the fourth column thereof. Penalties.

Explanation.—The entries in the second column of the following table, headed “ Subject,” are not intended

¹Clause (bb) was inserted by s. 4 of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

²See foot-note 3 on p. 669, *ante*.

³Clause (g) was omitted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act VI

(Chapter III.—Penalties.—Sec. 21.)

as definitions of the offences described in the provisions mentioned in the first column, or even as abstracts of those provisions ; but are inserted merely as references to the subject thereof :—

1	2	3	4
Provisions of the Act.	Subject.	Maximum fine which may be imposed for a first offence.	Maximum fine or imprisonment, or both, which may be imposed for a second or subsequent offence.
Section 5, sub-section (1).	Sale, etc., of adulterated food.	Two hundred rupees.	One thousand rupees, or imprisonment for three months, or both.
Section 6, sub-section (1).	Sale, etc., of milk, butter, ghee, wheat flour, mustard oil or notified article which is not of the prescribed quality ¹ [or is not labelled or marked in the prescribed manner].	Ditto ..	Ditto.
Section 6, sub-section (2).	Sale, etc., of articles similar to milk, butter, ghee, etc.	One hundred rupees.	Five hundred rupees, or imprisonment for three months, or both.
² [Section 6, sub-section (2a).	Sale, etc., of food containing any article which is not of the prescribed quality.	Two hundred rupees.	One thousand rupees, or imprisonment for three months, or both.]

¹These words were inserted by s. 5(1) of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

²This entry was inserted by s. 5(2), *ibid.*

of 1919.]

(Chapter III.—Penalties.—Sec. 21.)

1	2	3	4
Provisions of the Act.	Subject.	Maximum fine which may be imposed for a first offence.	Maximum fine or imprisonment, or both, which may be imposed for a second or subsequent offence.
Section 7, sub-section (1).	Keeping or permitting to be kept substance intended to be used for adulteration of butter, ghee, wheat, flour, mustard oil, etc.	One hundred rupees.	Five hundred rupees.
1*	*	*	*
Section 10, sub-sections (1), (2) and (3).	Refusal to sell or surrender articles of food required for purposes of analysis.	Two hundred rupees.	..
Section 12, sub-sections (1) and (2).	Offering resistance or obstruction to any authorised person inspecting or examining food or seizing or removing food believed to be adulterated.	Ditto ..	..
Section 12, sub-section (3).	Removing, interfering or tampering with food, etc., seized and left in custody.	Ditto ..	..

¹ The entry relating to section 8 was omitted by s. 5 (3) of the Bengal Food Adulteration (Amendment) Act, 1930 (Ben. Act V of 1930).

[Ben. Act VI of 1919.]

(The Schedule.)

THE SCHEDULE.

FORM OF CERTIFICATE.

(See Sections 9 and 14.)

To¹

I, the undersigned, public analyst for the
 , do hereby certify that I received on the
 day of 19, from² a
 sample of for analysis (which then
 weighed³) and have analysed the same
 and declared the result of my analysis to be as follows:—

I am of opinion that the same is a sample of

⁴Observations.

Signed this day of 19

A. B.

at

¹Here insert the name of the person submitting the article for analysis.

²Here insert the name of the person delivering the sample. If the sample is received by post or by railway, entry should be made accordingly.

³When the article cannot be conveniently weighed, this passage may be erased or the blank may be left unfilled.

⁴Here the analyst may insert at his discretion, his opinion as to whether the mixture (if any) was for the purpose of rendering the article potable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether it was in excess of what is ordinary or otherwise.

NOTE.—In the case of a certificate regarding milk, butter or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

349.54/BEN



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